

THE MISSOURI CRIMINAL CODE

A HANDBOOK FOR
LAW ENFORCEMENT OFFICERS

Prepared by
The Law Enforcement Training Institute
University of Missouri Extension

Manual 121

38th Edition

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ABOUT THIS HANDBOOK

This Handbook is designed as a field reference guide for Missouri law enforcement officers. It is designed to provide only a summary and overview of many of the crimes most frequently encountered by officers. This version of the Handbook incorporates the legislative changes made through the 2022 legislative session (effective as of August 28, 2022).

Obviously, this Handbook does not contain every Missouri criminal statute; nor does it contain every other law that officers may need to be aware of that may impact law enforcement operations.

This Handbook should not be relied on as a final authority. Any questions about the law or its application, should be addressed with competent agency legal counsel.

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Chapter 1

Introductory Matters

1.1 Introduction

The Revised Criminal Code, effective January 1, 2017, sought to restore Missouri's criminal law as a system, rather than a mere collection, of criminal statutes. The Code was the product of decade after decade of statutes enacted by the General Assembly, nearly all made on a piecemeal basis, with little attention given to the effect of these changes on the Criminal Code. The authors of this revised legislation sought to produce a functional Revised Criminal Code representing a system of offenses, rather than a collection of offenses, one that systematically organized the substantive criminal law and reflected current reality.

1.2 Organization of the Criminal Code

The Revised Criminal Code focuses on Chapters 556 to 580, dividing it into two parts – General Provisions and Specific Offenses – in order to outline in general terms the primary changes embodied in this revision.

1.3 Classes of Offenses (§556.061)

Offenses are classified as felonies and misdemeanors. There are five classes of felonies and four classes of misdemeanors. A felony is defined as: an offense so designated or an offense for which persons found guilty thereof may be sentenced to death or imprisonment for a term of more than one year. A misdemeanor is defined as: an offense so designated or an offense for which persons found guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year or less.

1.4 Infractions (§556.021)

A violation is an infraction if it is so designated or if no other sentence than a fine, or a fine and forfeiture or other civil penalty is authorized. The conviction of an infraction does not carry with it the consequences of a "criminal conviction."

1.5 Offenses Must be Defined by Statute (§556.026)

No conduct constitutes an offense unless made so by the Code or by other applicable statute.

Note The Revised Criminal Code and other state criminal statutes deal only with violations of state law. Violations of local ordinances are not covered by this handbook, which is limited to state criminal law.

**1.6 Application to Offenses Committed Before and After Enactment
(§§556.031, 556.001)**

The criminal code does not apply to any offenses committed prior to January 1, 1979. As to those offenses, the law in effect at the time the offense was committed applies as to the definition of the offense, the penalty and the defenses, which may be available. The criminal code applies to conduct occurring as of January 1, 1979 and thereafter. The Revised Criminal Code applies to conduct occurring as of January 1, 2017 and thereafter.

1.7 Venue- Where Offenses are Punished (§541.033)

Persons accused of committing offenses in violation of the laws of Missouri shall be prosecuted:

1. In the county in which the offense is committed; OR
2. If the offense is committed partly in one county and partly in another, or if the elements of the offense occur in more than one county, then in any of the counties where any element of the offense occurred; OR
3. In investigations of sexual offenses under Chapter 566 where the venue is unknown, the Attorney General may request that the Cole County Prosecutor request an investigative subpoena. Once venue is determined, then the Attorney General must provide evidence to the county prosecuting attorney (§542.425).

In addition to the above, persons accused of committing the offenses of identity theft against the laws of Missouri under §§570.223, 570.224, and 575.120 may also be prosecuted in the county in which the victim resides, or in the county in which the property obtained or attempted to be obtained was located.

1.8 Time Limitations (§556.036)

For most offenses, prosecution must be commenced within a certain time period after the commission of the offense or the prosecution cannot be maintained. A prosecution is commenced for a misdemeanor or infraction when the information is filed and for a felony when the complaint or indictment is filed.

The time limitations for offenses are as follows:

1. There is no time limitation on the filing of charges for the offenses of: murder, rape in the first degree, forcible rape, attempted rape in the first degree, attempted forcible rape, sodomy in the first degree, forcible sodomy, attempted sodomy in the first degree, attempted forcible sodomy, or any class A felony. Prosecution of these offenses may commence regardless of how long ago the offense occurred;
2. Arson first degree (when classified as a B felony), arson second degree and knowingly burning or exploding must be filed within 5 years of the commission of the offense;
3. Any felony (other than those listed above) must be filed within three years of the commission of the offense;
4. Any misdemeanor must be filed within one year of the commission of the offense;
5. Any infraction must be filed within six months of its commission.

The running of these time periods stops or tolls when:

1. The accused is absent from the state (but in no case shall this extend the limitation period beyond three years); or
2. The accused is concealing him/herself from justice either in or outside the state; or
3. When a prosecution against the accused for the offense is pending; or
4. When the accused is found to lack mental fitness to proceed; or
5. During any period of time after which a DNA profile is developed from evidence collected in relation to the commission of a crime and included in a published laboratory report until the date upon which the accused is identified by name based upon a match between that DNA evidence profile and the known DNA profile of the accused.

Note: Even if the time period has expired, a prosecution may nevertheless be commenced if one of the following exceptions applies:

1. If the offense contains an element of either fraud or breach of a fiduciary obligation, prosecution may be commenced within one year after the victim or the prosecutor discovers the offense. However, the

- normal three-year time limitation cannot be extended by more than three additional years; OR
2. Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years; OR
 3. Any offense based upon the intentional and willful fraudulent claim of child support arrearage to a public servant in the performance of his or her duties within one year after the discovery of the offense but in no case shall this provision extend the period of limitation by more than three years.
 4. Prosecutions for unlawful sexual offenses involving a victim eighteen years of age or under may be commenced at any time. (§556.037)

1.9 Prosecutors' Power to Dismiss and Re-file Charges (§56.087)

A prosecuting attorney has the power, in his or her discretion, to dismiss a complaint, information or indictment, or any count or counts thereof, without consent of the court. A dismissal filed before double jeopardy has attached may be refiled within the time limitation provided by the applicable statute. A dismissal filed after jeopardy has attached cannot be refiled unless the defendant consents.

Double jeopardy attaches in a jury trial when the jury has been impaneled and sworn. In a court tried case, jeopardy attaches when the court begins to hear evidence.

1.10 Limitation on Conviction for Multiple Offenses (§556.041)

In general, a person can be prosecuted and convicted for all the offenses (s)he has committed, even though they arise out of the same transaction. The Code provides for four exceptions to this, and a person cannot be convicted of more than one offense if:

1. One offense is included in the other offense. See ¶1.11 for a discussion of included offenses.
2. The offenses are based on inconsistent facts.
3. The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.
4. The offense is defined as a continuing course of conduct (such as conspiracy) then it is only one offense unless the law provides that specific periods of such conduct constitute separate offenses (as for example, a statute specifically stating that each day's conduct is a separate offense). In

addition, there may be times when splitting a single act into several offenses may violate the double jeopardy provisions of the state and federal constitutions.

1.11 Included Offenses (§556.046)

A person charged with a particular offense in an indictment or information can, of course, be convicted of that offense. Such a charge also allows for a conviction of included offenses even though no specific mention of these offenses is made in the information or indictment. An included offense is:

1. One which can be proved by the same or fewer facts than the offense charged. For example, stealing (§570.030) is an included offense of second degree robbery (§570.025) because robbery requires proof of stealing.
2. One which is a lesser degree of the offense charged. For example, second degree robbery (§570.025) is an included offense of first degree robbery (§570.023).
3. An attempt to commit the offense charged. For example, attempted first degree robbery is an included offense of first degree robbery.

Note as discussed in ¶1.10, a person cannot be convicted of both the offense charged and an included offense.

1.12 Burden of Injecting the Issue (§556.061)

In several places the Code uses the phrase "The defendant shall have the burden of injecting the issue." This applies during the trial and means that some evidence on the issue must be raised by the defense before it may be considered by the jury. If the issue is raised, the burden of proof is on the state so that if the jury has a reasonable doubt as to the issue, they will find for the defendant.

1.13 Affirmative Defense (§556.061)

"Affirmative defense" is a phrase that is used in several places in the Code. It also applies during the trial and means that not only must there be evidence introduced on an issue before it can be considered by the jury, but also that the burden of proof is on the defendant to persuade the jury that the defense is more likely true than not true.

1.14 Penalty Ranges

In order to understand the Revised Criminal Code and in particular the specific offenses, it is necessary to be familiar with the classification of offenses. In addition to the classifications of felonies, misdemeanors and infractions, the Code divides felonies into five classes and misdemeanors into four classes. Infractions

are not divided into classes. Thus, there are class A, B, C, D, and E felonies and class A, B, C, and D misdemeanors. The provisions on sentencing (Chapters 557-560) set out the possible penalties that can be imposed for each class of offense.

Note: Every sentence to the Department of Corrections includes a prison term and a conditional release term. For example, a person sentenced to a ten-year term will, unless paroled earlier, serve seven years and then be on conditional release for three years. The restrictions and control over a person on conditional release are the same as for a person on parole. The result is that there is no more "flat time" and every person coming out of the Department of Corrections will be under supervision.

RANGES OF PUNISHMENT

FELONY OFFENSES

Class A: Minimum 10 years up to 30 years or Life in MDOC.

Class B: Minimum 5 years up to 15 years in MDOC.

Class C: Minimum 3 years up to 10 years in MDOC, and/or a fine of \$1 up to \$10,000.

Class D: 1 day up to 1 year in County Jail, or up to 7 years in MDOC, and/or a fine of \$1 up to \$10,000.

Class E: 1 day up to 1 year in County Jail, or up to 4 years in MDOC, and/or a fine of \$1 up to \$10,000.

MISDEMEANOR OFFENSES

Class A: 1 day up to 1 year in County Jail, and/or a fine of \$1 up to \$2,000.

Class B: 1 day up to 6 months in County Jail, and/or a fine of \$1 up to \$1,000.

Class C: 1 day up to 15 days in County Jail, and/or a fine of \$1 up to \$750.

Class D: fine up to \$500.

INFRACTIONS: \$1 up to \$400 fine

1.14A Extended Terms for Prior Criminal Conduct (§558.016)

Under the Revised Criminal Code, the court may sentence a person to an extended term of imprisonment if:

- (1) The person is a **persistent offender** or **dangerous offender**, and the person is sentenced under subsection 7 of §558.016; or
- (2) The statute under which the person was found guilty contains a **sentencing provision** based on a **prior finding of guilt or a finding of prior criminal conduct**, and the person is sentenced according to the statute; or
- (3) A **more specific sentencing enhancement provision** applies that is based on a **prior finding of guilt or finding of prior criminal conduct**.

A "prior offender" is one who has been found guilty of one prior felony.

A "persistent offender" is one who has been found guilty of two or more felonies committed at different times.

A "dangerous offender" is one who:

1. is being sentenced for a felony during the commission of which (s)he knowingly murdered or endangered or threatened the life of another person or knowingly inflicted or attempted or threatened to inflict serious physical injury on another person; AND
2. has been previously convicted of a class A or B felony or of a dangerous felony.

A "persistent misdemeanor offender" is one who has pleaded guilty to or been found guilty of two or more class A or B misdemeanors committed under the laws of this state.

If the defendant is a "prior offender" or "persistent misdemeanor offender," the jury does not have a role in sentencing and the court may impose any sentence authorized for that offense under the statute. If the defendant is a "persistent" or "dangerous offender," the jury does not have a role in sentencing. The court may sentence the defendant to an extended term. Section 558.016 authorizes the following maximum terms of imprisonment for a persistent offender or dangerous offender:

1. Class A felony has no enhanced sentence range;
2. Class B felony is sentenced within the class A felony range;
3. Class C felony is sentenced within the class B felony range;
4. Class D felony is sentenced within the class C felony range; and
5. Class E felony is sentenced within the class D felony range.

1.14B Extended Terms, Minimum Terms for Persistent Sexual Offenders and Predatory Sexual Offenders (§566.125)

A "persistent sexual offender" or "predatory sexual offender" extended terms (which was 558.018) has been renumbered 566.125 and moved to Chapter 566 (sexual offenses). The jury has no role in sentencing a person found to be a "persistent sexual offender" or "predatory sexual offender" and the statute states that the court shall sentence a **persistent sexual offender/predatory sexual offender** to an extended term of imprisonment, and that any term of imprisonment for a **persistent sexual offender/predatory sexual offender** shall be imprisonment for life without probation or parole.

A "persistent sexual offender" is one who has previously been found guilty of statutory rape in the first degree, statutory sodomy in the first degree, rape in the first degree, forcible rape, forcible sodomy, rape, or sodomy, or of attempting the any of the aforesaid offenses.

A "predatory sexual offender" is one who has previously been found guilty of rape, sodomy, first degree rape, first degree sodomy, statutory rape in the first degree, statutory sodomy in the first degree or an attempt to commit any of the aforesaid offenses or the class B felony of child molestation in the first degree or the class B felony of sexual abuse in the first degree, or has previously committed an act which would constitute one of the aforesaid offenses whether or not the act resulted in a conviction, or has committed an act or acts against more than one victim which would constitute one of the aforesaid offenses whether or not the defendant was charged with an additional offense or offenses as a result of such act or acts. The court shall sentence a person found to be a predatory sexual offender to life imprisonment, and shall further set the minimum term to be served by such offender before such person is eligible for parole, conditional release or other early release by the department of corrections. One found to be a predatory sexual offender is subject to lifetime parole, and may not be furloughed while serving his sentence.

The minimum time to be served by a person found to be a predatory sexual offender who:

1. Has previously been found guilty of committing or attempting to commit statutory rape in the first degree, statutory sodomy in the first degree, rape in the first degree, forcible rape, forcible sodomy, rape, or sodomy, or of attempting the any of the aforesaid offenses and is found guilty of committing or attempting to commit any of these offenses shall be any number of years but not less than thirty years;

2. Has previously been found guilty of child molestation in the first or second degree, or sexual abuse when classified as a class B felony and is found guilty of attempting to commit or committing statutory rape in the first degree, statutory sodomy in the first degree, rape in the first degree, forcible rape, forcible sodomy, rape, or sodomy, or of attempting the any of the aforesaid offenses shall be any number of years but not less than fifteen years;
3. Has previously been found guilty of committing or attempting to commit statutory rape in the first degree, statutory sodomy in the first degree, rape in the first degree, forcible rape, forcible sodomy, rape, or sodomy, or of attempting the any of the aforesaid offenses, or committing child molestation in the first or second degree, or sexual abuse when classified as a class B felony shall be any number of years but not less than fifteen years;
4. Has previously been found guilty of child molestation in the first degree or second degree, or sexual abuse when classified as a class B felony, and is found guilty of child molestation in the first or second degree, or sexual abuse when classified as a class B felony shall be any number of years but not less than fifteen years;
5. Is found to be a predatory sexual offender due to having previously been found guilty of rape, sodomy, first degree rape, first degree sodomy, statutory rape in the first degree, statutory sodomy in the first degree or an attempt to commit any of the aforesaid offenses or the class B felony of child molestation in the first or second degree or the class B felony of sexual abuse in the first degree whether or not the act resulted in a conviction, or has committed an act or acts against more than one victim which would constitute one of the aforesaid offenses whether or not the defendant was charged with an additional offense or offenses as a result of such act or acts shall be any number of years within the range to which the person could have been sentenced pursuant to the applicable law if the person was not found to be a predatory sexual offender.

1.14C Minimum Prison Terms for Certain Offenders (§558.019)

Dangerous Felonies: Any person who has been found guilty of a dangerous felony shall serve a minimum of 85% of his/her sentence before becoming eligible for parole. Dangerous felonies are the offenses of: Arson in the first degree; Assault in the first degree; Assault in the second degree (if the victim is a special victim under subdivision 14 of §565.002); If physical injury results, attempted rape in the first degree, attempted sodomy in the first degree, attempted forcible rape, attempted forcible sodomy; Rape in the first degree; Sodomy in the first degree; Forcible rape; Forcible sodomy; Kidnapping in the first degree; Kidnapping; Murder in the second degree; Assault of a law enforcement officer

in the first degree; Domestic assault in the first degree; Elder abuse in the first degree; Robbery in the first degree, Armed criminal action, Conspiracy to commit an offense when the offense is a dangerous felony, Vehicle hijacking when punished as a class A felony; When the victim is a child less than twelve years of age at the time of the act giving rise to the offense, statutory rape in the first degree and statutory sodomy in the first degree; the class A felony form of child abuse; child kidnapping; parental kidnapping when the child is held or concealed for 120 days or more; child molestation in the first or second degree; and if the person is determined to be a “habitual offender” (577.001), an “intoxication-related traffic offense” or “intoxication-related boating offense.”

Prior Commitments to Prison: Any person who has pleaded guilty to or has been found guilty of a felony listed in §558.019(2) and served time of imprisonment in the Missouri Department of Corrections, or in a penal institution in another state which is equivalent to the Missouri Department of Corrections, or a federal prison shall be required to serve the following minimum terms:

1. Forty percent of the sentence if the defendant has one previous prison commitment;
2. Fifty percent of the sentence if the defendant has two previous prison commitments; and
3. Eighty percent of the sentence if the defendant has three or more previous prison commitments.

For purposes of setting minimum sentences, a life sentence is defined as 30 years. Any sentence either alone or in the aggregate with other consecutive sentences for offenses committed at or near the same time, which is 75 years or more, shall be calculated at 75 years.

A prisoner who is at least 70 years of age and has served at least 40% of his sentence shall be eligible for parole.

A minimum prison term is that amount of time which must be served by the defendant before (s)he is eligible for probation, parole, conditional release, or other early release.

An offender who was convicted of, or pled guilty to, a felony offense other than those offenses listed in §559.019(2) prior to August 28, 2019, shall no longer be subject to the minimum prison term provisions under §559.019(2) and shall be eligible for parole, conditional release, or other early release by the department of corrections according to the rules and regulations of the department.

Medical parole may be granted when an offender is in need of long-term nursing home care. (§217.250)

When an offender has pled guilty to or been convicted of criminal offenses prior to his pending charge(s), there are **four major ways the State uses his/her prior criminal history:**

1) For persistent offenders, **extend the maximum sentence** allowed for Class B, C and D felonies,

2) During the prosecution of the pending case, the State can choose to allege the Defendant's prior record, and thereby **take the question of punishment away from the jury.** Where this occurs, the Jury only decides whether the defendant is guilty as charged. The Judge decides punishment. If the Defendant is not a prior or persistent offender, the Jury decides both guilt and recommends the proper punishment,

3) Depending on the Defendant's prior record of incarceration in the Department of Corrections, his **parole date may be extended,**

4) If the Defendant takes the witness stand during the trial of his/her pending case, the State may **impeach his/her credibility** by questions regarding the existence of his prior criminal history. Such questions are limited and only extend to prior pleas of guilty and/or convictions.

Definitions:

"Probation" is a period of time, imposed by the Judge, during which the Defendant must comply with certain conditions. If the Defendant successfully completes probation, (s)he will not be required to serve additional time in jail or prison. Probation may be imposed after the defendant has served a period of "shock incarceration" in Jail or Prison. Probation is usually imposed when the Court gives the defendant a Suspended Imposition of Sentence or a Suspended Execution of Sentence.

"Parole" – the defendant has been incarcerated for a portion of the sentence imposed by the Judge. Prior to the completion of that sentence, the Defendant can be released on parole. The parole period runs until the term (s)he was sentenced to runs out.

"Suspended Execution of Sentence" – there is a record of a defendant's conviction but no jail time will be served if probation was satisfactorily completed.

"Suspended Imposition of Sentence" – there is no record of a conviction if the defendant satisfactorily serves probation.

Note: (Probation Information §559.115(8)) Notwithstanding any other provision of law, probation may not be granted pursuant to this section to defendants who have been convicted of murder in the second degree pursuant to

§565.021; rape in the first degree pursuant to §566.030; forcible rape under §566.030 prior to August 28, 2013; sodomy in the first degree pursuant to §566.062; forcible sodomy under §566.030 prior to August 28, 2013; statutory rape in the first degree pursuant to §566.032; statutory sodomy in the first degree pursuant to §566.062; the class A felony form of child molestation in the first degree under §566.057; abuse of a child pursuant to §568.060, when classified as a class A felony; a defendant who has been found in a predatory sexual offender pursuant to §566.125; any offense under **§557.045**; or any offense in which there exists a statutory prohibition against either probation or parole.

(Ineligibility for probation, SIS, SES, or conditional release §557.045) No person found guilty of, or pleading guilty to, the following offenses shall be eligible for probation, suspended imposition or execution of sentence, or conditional release, and shall be sentenced to a term of imprisonment pursuant to subdivision (1) of subsection 2 of §557.011: (1) Second degree murder when a person knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person, as defined in subdivision (1) of subsection 1 in §565.021; (2) Any dangerous felony, as the term is defined in §556.061, where the person has been previously found guilty of a class A or B felony or a dangerous felony; or (3) Any dangerous felony, as the term is defined in §556.061, where the commission of the felony involves the use of a deadly weapon, as that term is defined in §556.061 or (4) Any dangerous felony, as the term is defined in §556.061, where the victim is a law enforcement officer, firefighter, or an emergency service provider while in the performance of his or her duties.

1.14D Hate Crimes (§557.035) **Penalty Varies (See Below)**

This provision enhances penalties for certain offenses committed by individuals who possess certain motivational factors.

1. a. For all violations of:
 - i. §565.054 (assault in the third degree); OR
 - ii. §565.090 (harassment in the first degree); OR
 - iii. §569.100.1(1) (property damage in the first degree); OR
 - iv. §571.030.1(1), (2), (3), (4), (6), (7), or (8) (unlawful use of a weapon);
- b. which the state believes to be knowingly motivated because of race, color, religion, national origin, sex, sexual orientation or disability of the victim or victims;
- c. the state may charge the offense or offenses under this section, and the violation is a class D felony.

2. a. For all violations of:
 - i. §565.056 (assault in the fourth degree); OR
 - ii. §565.090.1 (1), (3) and (4) (harassment); OR
 - iii. §569.090.1 (1) (tampering in the second degree); OR
 - iv. §569.120.1 (1) (property damage in the second degree); OR
 - v. §569.140 (trespass); OR
 - vi. §574.050 (rioting);
- b. which the state believes to be knowingly motivated because of race, color, religion, national origin, sex, sexual orientation or disability of the victim or victims,
- c. the state may charge the offense or offenses under this section, and the violation is a class E felony.

Definitions:

Disability is defined as a physical, developmental or mental impairment, which substantially limits one or more of a person's major life activities, being regarded as having such an impairment, or a record of having such an impairment.

Sexual orientation is defined as male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender.

**1.15 Deaf Arrestee Has Right to Interpreter Before Questioning
(§476.750-§476.766)**

Procedural law for law enforcement officers is beyond the scope and intent of the Handbook.

Law enforcement officers, upon the arrest or involuntary detention of any deaf person, must make an interpreter available before any information may be elicited from the deaf arrestee. The deaf person may not waive his or her right to an interpreter unless given the opportunity to confer privately with an impartial interpreter. For a waiver of an interpreter's services to be valid, the deaf person must knowingly and voluntarily sign a written waiver.

1.16 Criminal Activity Forfeiture Act – CAFA (§513.600-§513.645)

All property of every kind including cash or other negotiable instruments used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture.

With 1986 legislation, very broad laws allow for the seizing of all property associated with criminal activity. If this is well utilized by law enforcement, it should prove to be a great crime deterrent and a great source of revenue.

A law enforcement officer, incident to a lawful arrest, search or inspection, may seize property where there is probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. The officer must then report the seizure to the prosecuting attorney or attorney general within four days. The prosecuting attorney or attorney general, provided they feel forfeiture is warranted, will then file a civil forfeiture petition with the courts within ten days. A law enforcement officer who believes property is subject to forfeiture, but it is not reasonable to believe that the property will be lost or destroyed if not immediately seized, shall contact the prosecuting attorney or attorney general for a writ of seizure. If a court believes that the property is subject to forfeiture, and believes that prior notice to the possessor would result in loss or destruction, a writ of seizure shall be issued without notice to the possessor. Otherwise, a civil action is brought by the prosecuting attorney with proper notice for hearing given to all persons known to have or who claim an interest in the property.

The court may order a judicial sale of the property with the net proceeds going into state revenue funds (state public school fund). The court as an alternative also may order the destruction of illegal contraband or order the retention of property for official use by any state agency or subdivision.

An innocent party's partial interest in property forfeited will be preserved. An interest holder may not be a criminal participant but still not be an innocent party if the person had actual knowledge that the property was used, or intended for use, or derived from or realized through criminal activity.

Civil forfeiture may be made within five years of the criminal activity. Property subject to forfeiture includes real and personal property or also intangible property having a pecuniary value.

Upon acquittal or dismissal of a criminal action against a person also named in a CAFA action, the civil action shall be dismissed.

Further details of the Criminal Activity Forfeiture Act may be obtained by contacting the county prosecuting attorney's office or the attorney general.

Definitions:

Criminal activity-the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any offense which is chargeable under the following Missouri laws:

1. Drug Offenses (Chapter 579);
2. Offenses Against the Person (Chapter 565);
3. Sexual Offenses (Chapter 566);
4. Offenses Against the Family (Chapter 568);
5. Robbery, Arson, Burglary, & Related Offenses (Chapter 569);
6. Stealing and Related Offenses (Chapter 570);
7. Prostitution (Chapter 567);
8. Child Pornography/Obscenity and Related Offenses (Chapter 573);
9. Offenses Against Public Order (Chapter 574);
10. Offenses Against the Administration of Justice (Chapter 575);
11. Witnesses (Chapter 491);
12. Gambling (Chapter 572);
13. Liquor Control Felony Violations (Chapter 311);
14. Weapons Offenses (Chapter 571);
15. Regulation of Securities (Chapter 409); AND
16. Regulation and Licensing of Motor Vehicles (Chapter 301).

NOTE: Law enforcement agencies using federal forfeiture system, report of federal seizure proceeds-- violation, penalty. §513.653

1. Law enforcement agencies involved in using the federal forfeiture system under federal law shall file a report regarding federal seizures and the proceeds therefrom. Such report shall be filed annually by January thirty-first for the previous calendar year with the department of public safety and the state auditor's office. The report for the calendar year shall include the type and value of items seized and turned over to the federal forfeiture system, the beginning balance as of January first of federal forfeiture funds or assets previously received and not expended or used, the proceeds received from the federal government (the equitable sharing amount), the expenditures resulting from the proceeds received, and the ending balance as of December thirty-first of federal forfeiture funds or assets on hand. The department of public safety shall not issue funds to any law enforcement agency that fails to comply with the provisions of this section.
2. Intentional or knowing failure to comply with the reporting requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

Examples:

1. Mary and Juana sell controlled substances to an undercover police officer out of their home. The money obtained from the drug buy is traced to a sports car recently purchased by Mary. All of the drugs, money, drug contraband, and the sports car should be seized. The home may also be subject to forfeiture subject to the interests of an innocent party.
2. Police raid Cindy's Motel and discover a brothel and gambling parlor. All gambling devices, money, negotiable instruments, and other related property should be immediately seized. Application should be made for civil forfeiture of the real property also. **Note** that if the property is not owned but leased by the criminal actor then the **lease** which has a monetary value is forfeitable.

1.17 Police Reports (§610.100)

Section 610.100 defines the terms arrest, arrest report, inactive, incident report, and investigative report. Incident and arrest reports shall be public records. Investigative reports are closed records until the investigation becomes inactive. If any portion of an incident report is likely to present a threat to a victim, witness, other person, or an investigation, that portion of the record shall be closed. A person wishing to challenge the closing of such a record may petition the court.

1.18 24 Hour Rule (§544.170)

All persons arrested without a warrant and confined in any jail or other place of confinement must be charged by the prosecutor within 24 hours of their arrest unless they have posted bond or received a release on their own recognizance. If the arrestee is not charged with a criminal offense within 24 hours of their arrest, the jail shall release them from custody.

1.19 Sheriff and Jailer to Receive Prisoners (§211.040)

Section 221.040 makes it a misdemeanor for a sheriff or jailer to refuse to receive a person arrested on a State charge. However, the sheriff or jailer shall not take an arrested person as prisoner who appears to be unconscious, suffering from a serious illness, suffering from a serious injury, or seriously impaired by alcohol and/or a controlled substance and drugs until that person is first examined by a physician or competent medical personnel.

1.20 Custodial Interrogation Statute (§590.700)

Section 590.700 requires law enforcement officers to record suspect interviews/interrogations in cases of murder, first degree assault, first degree assault of a law enforcement officer, first degree domestic assault, first degree elder abuse, first degree robbery, first degree arson, first degree rape, forcible rape, first degree sodomy, forcible sodomy, kidnapping, first degree kidnapping, first degree statutory rape, first degree statutory sodomy, child abuse and child kidnapping. However, there does not have to be a recording under the following circumstances:

1. Suspect requests it not be recorded;
2. The interrogation/interview occurs outside the State of Missouri;
3. Exigent circumstances exist impacting public safety;
4. Suspect makes spontaneous statements;
5. Recording equipment malfunctions;
6. Recording equipment is unavailable.

Under this statute, individual law enforcement agencies are required to adopt written policies regarding custodial interrogation recordings. Violations of this statute will not result in the exclusion of evidence and does not create a private cause of action.

1.21 Age of Juveniles (§211.021)

Under §211.021, an "**adult**" is a person eighteen years of age or older and a "**child**" is any person under eighteen years of age. But a person will not be considered a child if, at the time the alleged offense or violation was committed, the person was considered an adult according to then-existing law (§211.012).

Chapter 2

General Code Provisions

2.1 Introduction

This chapter deals with the Code sections on general principles of liability. These include the basic requirements of conduct, culpable mental states and accessory liability, and also some general defenses as entrapment, duress and the effect of intoxication on criminal liability.

2.2 Voluntary Act (§562.011)

Section 562.011 sets out one of the most basic requirements for criminal liability and provides that:

1. A person is not guilty of an offense unless his/her liability is based on conduct which includes a voluntary act.
2. A person performs a voluntary act if (s)he:
 - a. performs a bodily movement which is the result of his/her conscious effort and determination; OR
 - b. fails to perform an act which (s)he is physically capable of doing and which it was his/her duty to perform.
3. Possession (meaning having dominion or control over an item) is a voluntary act if the person:
 - a. knowingly procured or received the thing possessed; OR
 - b. is aware the item is in his/her possession and he continues to possess it after sufficient time to dispose of it or end his/her control of it.

This section states the obvious requirement for criminal liability, that there must be conduct, which includes a voluntary act. It would be futile to punish someone for movements which were completely beyond his/her control or to require acts that (s)he could not physically perform. However, it is important to note that the conduct required need not be that of the defendant, for a person can be criminally responsible for the conduct of other persons (see ¶2.8).

2.3 Culpable Mental State (§562.016)

In addition to conduct, a basic requirement for criminal liability is a culpable mental state and, with certain exceptions (see ¶2.5), a person is not guilty of an offense unless (s)he acts with a culpable mental state. The elements of a given offense will include the conduct of the person, the circumstances in which the conduct occurs and, in many instances, a certain result (such as death, burning of property, etc.). The elements of the particular offenses are set out in Chapters 5-19. In describing the culpable mental state that may be required as to the conduct, circumstances and results, the Code uses four terms: purposely, knowingly, recklessly and criminal negligence.

Under the Code:

1. A person acts **purposely** with respect to his conduct or a result when it is his/her conscious object (desire) to engage in that conduct or cause that result.
2. A person acts **knowingly** with respect to his/her conduct or to surrounding circumstances when (s)he is aware of the nature of his/her conduct or that the circumstances exist. A person acts knowingly with respect to a result when (s)he is aware that his/her conduct is practically certain to cause that result.

"Purposely" and "knowingly" involve what is commonly thought of as "intentional." Usually, it will make no difference in the degree of criminal liability whether a person acted purposely or acted knowingly. The difference between purposely and knowingly is significant in those offenses, such as attempts and conspiracies, where achieving the objective is not required for guilt, but a purpose to achieve the objective is required.

For example, §569.055 makes it an offense to knowingly damage property of another by starting a fire or causing an explosion. If the defendant threw a lighted match into a pool of gas under a car and so started a fire which damaged the car, (s)he would be guilty under §569.055 if (s)he was aware (s)he was throwing a lighted match into a pool of gas underneath a car belonging to another person and knew it was practically certain that a fire or explosion would result in damaging the car. Since one can never "know" that a certain result will follow to an absolute certainty, all that is required is that the defendant know it to a practical certainty.

If, in the same example, no fire resulted and so the car was not damaged but the defendant was charged with attempting to violate §569.055, the jury would have to find it was his purpose to damage the car of another.

3. A person acts **recklessly** when (s)he consciously disregards a substantial and unjustifiable risk that circumstances exist or a result will follow and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.
4. A person acts with **criminal negligence** when (s)he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Thus "acting recklessly" or "with criminal negligence" involves what is commonly thought of as "unintentional." The difference between recklessness and criminal negligence is that recklessness requires an awareness of the risk and a conscious disregard of the risk, while criminal negligence requires only that the person should have been aware of the risk.

Note that the risk involved in both recklessness and criminal negligence must be a substantial and unjustifiable risk. This means that not only must the risk be a significant risk but that the taking of the risk is not offset by some benefit. Driving a car at a high rate of speed may create a substantial risk of causing serious physical injury but whether such would be sufficient for recklessly causing serious physical injury (assuming such injury occurred) would also depend on why the person was speeding. That is, rushing a heart attack victim to a hospital could justify taking some risks which would not be justified simply because the driver was late for work. Thus, a jury may be called on to make the moral judgment whether the disregard of or failure to be aware of the risk "constitutes a gross deviation from the standard of care" of a reasonable person.

2.4 Culpable Mental State in Particular Offenses (§562.021)

In defining a particular offense, the statute may set out the elements of the offense and specify the mental state for each, in which case, it will be clear what mental state applies as to each element.

A statute may also mention a specific mental state at the beginning and not mention any mental state thereafter. In such a case, the specified mental state applies to all the elements of the offense.

Except as provided in §562.026 if the definition of an offense does not expressly prescribe a culpable mental state, a culpable mental state is nonetheless required and is established if a person acts purposely or knowingly or recklessly, but criminal negligence is not sufficient unless the statute specifies criminal negligence.

Because of the definitions given the four mental states, the less culpable mental states are automatically included in the higher culpable mental states. Thus, if a statute required that a defendant act with criminal negligence in order to be charged with a particular offense, (s)he could be found guilty of that offense if (s)he acted with criminal negligence, recklessness, knowledge or purpose. If the statute required acting recklessly, (s)he could be found guilty if (s)he acted with recklessness, knowledge or purpose.

2.5 Culpable Mental State: When Not Required (§562.026)

A culpable mental state is required unless the offense is an infraction (and no mental state is specified), or if a statute clearly indicates no mental state is required as to a specific element of the particular offense.

For example, second degree trespass (§569.150) is an infraction and requires only entering unlawfully the real property of another. No mental state is specified and so even if the defendant were not even negligent (say he honestly and reasonably but erroneously believed (s)he had the permission of the owner to enter) it would make no difference so long as all the elements of the offense occurred.

Section 566.020 provides that the sexual offenses have as an element that the victim must be under the age of fourteen. It is no defense that the defendant believed the victim was fourteen or older, and, thus, even an honest and reasonable mistake as to that age would make no difference. However, a mental state would be required as to all the other elements of the offense because this statute is limited only to the mental state as related to age of the victim.

2.6 Ignorance and Mistake (§562.031)

Whenever a mental state is required, that mental state may be absent if the defendant is mistaken as to the existence of an element of the offense. If the mistake negates the required mental state, then the defendant cannot have the required mental state. The type of mistake that will excuse will depend upon the mental state required for the offense.

For example, one form of stealing under §570.030 requires that the defendant know or believe the property was stolen. If (s)he mistakenly believes (s)he is buying the property from the true owner, (s)he cannot be guilty of the offense so long as his/her belief was honest. But it would have to be a reasonable mistake.

To negate criminal negligence the mistake has to be both honest and reasonable. An honest belief can negate purpose, knowledge and recklessness. However, the

mistake must relate to an element of the offense; that is, if the mistaken belief was true then the element of the offense would be missing.

For example, if the defendant, armed with a revolver, forcibly steals money from a woman, believing that the victim is a man, the defendant would still be guilty of first degree robbery. The mistake (as to the sex of the victim) is irrelevant since the sex of the victim is not an element of first degree robbery.

Ordinarily a person's belief as to whether the conduct (s)he is engaging in is lawful or not is irrelevant to criminal liability. There are some situations where the legality of the conduct is specifically made an element of the offense and in those situations a mistaken belief as to legality can excuse the conduct. For example, second degree kidnapping (§565.120) requires that the defendant "knowingly restrain another unlawfully."

If the defendant honestly believes (s)he is lawfully restraining another person, (s)he does not have the mental state required for second degree kidnapping. Of course, (s)he may be guilty of another offense, such as assault.

2.7 Accountability for Conduct (§562.036)

To be guilty of an offense a person must have the culpable mental state required by the statute and must be responsible for the conduct that constitutes the offense. A person is responsible for his/her own conduct and in some situations may be criminally responsible for the conduct of other persons.

2.8 Responsibility for the Conduct of Another (§562.041)

This section deals with what is called acting in concert with another or accessory liability. In many circumstances, a defendant can be held accountable for the conduct of other persons.

To be guilty of an offense based upon the conduct of another person, the defendant must have whatever mental state is required for the offense. A defendant will be criminally responsible for the conduct of another when, with the purpose of promoting the commission of an offense, (s)he aids or agrees to aid or attempts to aid such other person in planning, committing or attempting to commit the offense.

If, for example, one person aids another person in planning a burglary and the other person commits the burglary, both are guilty of burglary, even though only one was present at the scene of the offense.

If the burglar (the one who did the acts of burglary) also committed another offense in addition to the burglary, the liability of the person who aided the burglar will depend upon the aider having the necessary mental state for the other offense.

In general, persons who act in concert are responsible for the conduct of each other to the extent that the conduct is sufficiently related to their common scheme.

2.9 Defenses Precluded (§562.046)

One can be criminally responsible for the conduct of another even though the other person is not guilty of any offense. If the defendant aided the other person, it is no defense that the other person has not been convicted, or even that the other person was acquitted. It is no defense that the other person lacked criminal capacity such as lacking responsibility because of mental disease or defect, or being too young. It is the conduct of the other person that is imputed to the defendant, and that can include the conduct of an innocent person, such as a person acting under duress, or one who is not aware of the defendant's criminal purpose, or who, for any reason is incapable of committing the offense.

For example, if suspect persuades another who has a mental disease or defect to commit a murder and that person was, after a trial, found not guilty by reason of mental disease or defect (mentally incompetent), the suspect could still be found guilty on the basis of being criminally responsible for the conduct of another person, even though s/he did not engage in the actual killing. In other words, the suspect could not claim s/he was not guilty simply because his/her co-defendant was legally not guilty.

2.10 Conviction of Different Degrees of Offenses (§562.051)

Even when a defendant is criminally responsible for the conduct of another, in order to be guilty of a particular offense, the defendant must have the mental state required for that offense. Thus, it is possible for the defendant and the other person to be guilty of different degrees of the offense.

For example, if a defendant, in cold blood, gave a knife to another person who, while enraged, used the knife to kill someone, the defendant might be guilty of murder, while the other person who actually did the killing might only be guilty of manslaughter.

2.11 Liability of Corporations and Unincorporated Associations (§562.056)

Section 562.056 sets out those circumstances when a corporation or unincorporated association can have criminal liability.

2.12 Liability of Individual for Conduct of Corporation or Unincorporated Association (§562.061)

Corporations and unincorporated associations can act only through individuals, and this section provides that a person who commits an offense is still individually responsible even though he was acting for a corporation or other group.

2.13 Entrapment (§562.066)

An entrapment occurs if a law enforcement officer or a person acting in cooperation with such an officer, for the purpose of obtaining evidence of the commission of an offense, solicits, encourages or otherwise induces another person to engage in criminal conduct when (s)he was not ready and willing to engage in such conduct.

When an entrapment occurs, the conduct of the person entrapped will not result in criminal liability. However, this defense of entrapment will not apply to offenses involving causing or placing another person in danger of physical injury.

Note that an entrapment involves two requirements: first, that the solicitation or encouragement be by an officer (or someone working in cooperation with the officer); and secondly, that the person so encouraged or solicited was not already predisposed to commit the offense. In order for there to be a defense of entrapment, both requirements must be satisfied.

2.14 Duress (§562.071)

It will sometimes be a defense to criminal liability that the defendant was forced to commit the offense. If the defendant was coerced into committing the offense by the use or threatened imminent use of unlawful physical force by another person, and such force or threat of force was such that a person of reasonable firmness in the defendant's position would not have been able to resist, then he has the defense of duress. Duress, however, cannot be used as a defense to murder. **Note** also that duress is an affirmative defense.

2.15 Intoxicated or Drugged Condition (§562.076)

Ordinarily the fact that a defendant was in an intoxicated or drugged condition will not affect his/her criminal liability. The defense of being in an intoxicated or drugged condition has been substantially curtailed so that voluntary intoxication may no longer be used as a defense to an offense even if that person could not have been able to have the requisite mental state to commit the offense, re: purposely or knowingly.

However, evidence that a person was voluntarily intoxicated or drugged may be admissible when it is otherwise relevant. Still, a voluntarily intoxicated or drugged condition is not admissible for the purpose of negating a mental state which is an element of the offense. In a jury trial, the jury will be so instructed when evidence that a person was in a voluntarily intoxicated or drugged condition has been received into evidence.

Involuntarily produced intoxication remains a defense to an offense if the person lacked the capacity to know or appreciate the nature, quality or wrongfulness of the criminal conduct.

Involuntary intoxication (whether from alcohol or drugs) occurs when the individual in effect has no choice in becoming intoxicated, either because (s)he was forced to consume the alcohol or drugs, or when (s)he had no way of knowing that what (s)he was consuming would result in his becoming intoxicated. Being involuntarily intoxicated does not relieve one of criminal liability unless the intoxication is to such a degree that the person is rendered un-responsible in the sense of meeting the same standard as is required for being un-responsible because of mental disease or defect.

The defendant has the burden of injecting the issue for a defense of intoxicated or drugged condition.

**2.16 Lack of Responsibility Because of Mental Disease or Defect
(§562.086)**

The section makes no changes in pre-Code law. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect (s)he did not know or appreciate (was incapable of knowing and appreciating) the nature, quality or wrongfulness of his/her conduct (or was incapable of conforming his or her conduct to the requirements of law).

Chapter 3 Justification

3.1 Introduction

Conduct, which would otherwise be criminal can be justified and, thus, non-criminal because of the circumstances in which it occurs. This chapter deals with justification and with the specific situations in which the use of force is justified, as in self-defense, defense of other persons, defense of premises and property, and effecting arrest.

3.2 Civil Remedies Unaffected (§563.016)

The Justifications provided by the criminal Code apply only to criminal liability. If a person's conduct is justified under one of the Code provisions (s)he will have a defense to a criminal charge, but this does not necessarily mean (s)he will be immune from civil liability.

3.3 Execution of Public Duty (§563.021)

Section 563.021 provides that conduct, which is required by a statute or by a court order is justified and does not result in criminal liability. A person claiming justification under this section must reasonably believe (1) his/her conduct is required or authorized by the judgment or directions of a competent court or in the legal execution of legal process; or (2) his/her conduct is required or authorized to assist a public servant in the performance of his/her duties.

3.4 Justification Generally (§563.026)

This section provides a defense for conduct which would otherwise be criminal when such conduct is engaged in as an emergency measure to avoid an imminent injury to persons or property. It cannot be used as a defense to murder or any class A felony, nor is it available if the danger of imminent injury arose through the fault of the defendant. Most important, it is a defense only if the desirability

of avoiding the injury outweighs the harm sought to be prevented by the statute defining the offense charged.

Examples of conduct that could be justified under this section are:

1. blowing up a building to prevent the spread of a major fire (which if not justified could be second degree arson);
2. breaking into an unoccupied rural house for the purpose of making a telephone call to get medical assistance to save an injured person's life (which if not justified could be trespass or burglary); AND
3. forcibly restraining a person infected with a highly contagious disease in order to prevent him/her from going out and starting an epidemic (which if not justified could be third degree kidnapping).

The rest of this chapter deals with the justifications for the use of force in specific situations.

3.5 Use of Force in Defense of Persons (§563.031)

1. A person may, **subject to the provisions of subsection 2 of this section**, use physical force upon another person when and to the extent (s)he reasonably believes such force to be necessary to defend himself or herself or a third person from what (s)he reasonably believes to be the use or imminent use of unlawful force by such other person, unless:

(1) The actor was the initial aggressor; except that in such case his or her use of force is nevertheless justifiable provided:

- (a) (S)he has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force; or
 - (b) (S)he is a law enforcement officer and as such is an aggressor pursuant to §563.046; or
 - (c) The aggressor is justified under some other provision of this Chapter 563 or other provision of law;
- (2) Under the circumstances as the actor reasonably believes them to be, the person whom (s)he seeks to protect would not be justified in using such protective force;
- (3) The actor was attempting to commit, committing, or escaping after the commission of a forcible felony.

2. A person shall not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless:

- (1) (S)he reasonably believes that such deadly force is necessary to protect himself, or herself or her unborn child, or another against death, serious physical injury, or any forcible felony;
- (2) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by such person; or
- (3) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual, or is occupied by an individual who has been given specific authority by the property owner to occupy the property, claiming a justification of using protective force under this section.

3. A person does not have a duty to retreat:

- (1) From a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining;
- (2) From private property that is owned or leased by such individual; or
- (3) If the person is in any other location such person has the right to be.

4. The justification afforded by this section extends to the use of physical restraint as protective force provided that the actor takes all reasonable measures to terminate the restraint as soon as it is reasonable to do so.

5. The defendant shall have the burden of injecting the issue of justification under this section. If a defendant asserts that his or her use of force is described under subdivision (2) of subsection 2 of this section, the burden shall then be on the state to prove beyond a reasonable doubt that the defendant did not reasonably believe that the use of such force was necessary to defend against what (s)he reasonably believed was the use or imminent use of unlawful force.

3.6 Battered Spouse Syndrome (§563.033)

Evidence that the actor was suffering from the battered spouse syndrome shall be admissible as to the issue of whether the actor lawfully acted in self-defense or defense of another.

If the defendant proposes to offer evidence of the battered spouse syndrome, (s)he must file written notice of this intent with the court in advance of trial. Thereafter the court, upon motion of the state, must appoint one or more private psychiatrists or psychologists for the purpose of performing the examination of the accused.

For example, Anne finds a gun and shoots Bill at close range, while he sits at the kitchen table drinking a beer. At the time he was shot, Bill made no threats against Anne, but she feared he was getting drunk and feared that when he was drunk, he would hit her as he had hit her the past several nights; so, she shot him. The defendant files written notice of an intent to rely on the battered spouse syndrome. The state is entitled to have Anne examined independently, to determine whether she reasonably acted in fear of her husband, based on what he had done to her in the past. If her fear was reasonable, based on a past history of abuse, the use of deadly force could be justifiable in self-defense.

3.7 Use of Deadly Force in Defense of Premises (§563.031)

See Chapter 3.5; both are derived from the same statute.

3.8 Use of Physical Force in Defense of Property (§563.041)

A person is justified in using non-deadly force to protect property if (s)he reasonably believes another person is committing or attempting to commit stealing, property damage or tampering, and reasonably believes that such force as (s)he uses is necessary to prevent such stealing, property damage or tampering.

(S)He may also use physical restraint provided (s)he terminates the restraint as soon as it is reasonably possible to do so.

Deadly force is not justified simply to protect property. However, a person protecting property may be able to use deadly force under some other justification, such as self-defense.

For example, Donald sees Harry stealing Donald's bicycle. To prevent the loss of the bicycle, Donald might be justified in pulling Harry off the bicycle or knocking him down. Donald would not be justified in stabbing Harry or shooting him just to prevent a theft. However, if while Donald was trying to prevent the theft, Harry pulled a knife and tried to stab Donald, Donald could be justified in using deadly force in self-defense to protect himself from serious physical injury or death. (Note that while Donald was the aggressor in the encounter, his aggression was justified because he was acting in defense of property).

3.9 Law Enforcement Officer's Use of Force in Making an Arrest §563.046)

A law enforcement officer, as any other citizen, is justified in using force in **self-defense**. But a law enforcement officer is justified in being an aggressor when (s)he undertakes to make a lawful arrest or prevent an escape from custody. If the arrestee resists, the officer is not only permitted to defend himself/herself, (s)he is under no obligation to retreat or withdraw. (S)He is justified in using such non-deadly force as (s)he **reasonably believes is immediately necessary** to make the arrest or prevent the escape. However, the officer is not justified in using physical force to make an arrest unless the arrest is in fact lawful or the officer reasonably believes the arrest is lawful, and the amount of physical force used was objectively reasonable in light of the totality of the particular facts and circumstances confronting the officer on the scene, without regard to the officer's underlying intent or motivation.

Under Missouri law, a law enforcement officer **may not** use deadly force to make an arrest or prevent an escape unless (s)he **reasonably believes** that the use of deadly force is **immediately necessary** to effect the arrest **and also** reasonably believes that the person to be arrested:

1. has committed or attempted to commit a felony offense involving the infliction or threatened infliction of serious physical injury; OR
2. is attempting to escape by use of deadly weapon or dangerous instrument;
OR
3. may otherwise endanger life or inflict serious physical injury to the officer or others unless arrested without delay.

***Note:** With the change in this Code, Missouri's law is likely more in line with the US Supreme Court in *Tennessee vs. Garner* 3/27/85 (471 U.S.1 (1985)) which held that deadly force may be used against a fleeing felon only where it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. The supreme court indicated that some warning should be given to the suspect before deadly force is used, where feasible.

Note that the officer can act on reasonable appearances. Note also that even if the officer is not justified in using deadly force to make the arrest (s)he may be justified in using deadly force under some other justification such as self-defense.

3.10 Law Enforcement Official's Power of Arrest (§544.216)

Under §544.216), law enforcement officers the authority to arrest a person, based upon probable cause leading the officers to believe that the person has violated any state law including misdemeanors, infractions, and local ordinance violations. The offense need not be committed in the officer's presence. However, officers need to be "certified" by POST before they acquire general powers of arrest.

Arrest authority for misdemeanors and ordinance violations not committed in an officer's presence does not extend to the officers in municipalities with populations under 2,000 or of less than four full-time, non-elected peace officers unless the municipality complies with Missouri's minimum officer training law (Chapter 590).

The purpose of this added authority is to require some subjects to post bond to ensure their appearance in court. A physical arrest will not be necessary or appropriate for all misdemeanor and ordinance violations. Individual police department policies should be followed to the extent they are consistent with state law.

Note: Jailers are authorized to serve arrest warrants on any person under an arrest warrant who surrenders himself to the facility. (§221.515)

3.10A Certification required--when -- additional hours -- criminal background check -- qualification (§§590.010-590.195)

1. No person shall be appointed as a peace officer by any public law enforcement agency, which is possessed of the duty and power to enforce the general criminal laws of the state or the ordinances of any political subdivision of this state, unless (s)he has been certified by the director as provided in §§590.010-590.195. Starting on August 28, 1996, peace officers are required to complete the four hundred seventy hours of training as peace officers and be certified to be eligible for employment.
2. The chief executive officer of each law enforcement agency shall notify the director of the appointment of any peace or reserve officer not later than thirty days after the date of the appointment and will include with such notification a copy of a fingerprint card verified by the Missouri State Highway Patrol pertaining to the results of a criminal background check of the officer appointed and evidence of the completion of the standards necessary for employment as provided in §§590.100-590.180.
3. Training and certification requirements specified in §§590.100-590.180 are recommended but not required of a reserve officer; however, any person who serves as a reserve officer in any public law enforcement agency which is possessed of the duty and power to enforce the general criminal laws of this state or the ordinances of any political subdivision of this state may, at the option of the political subdivision in which the reserve officer is appointed, participate in the basic training program required under the provisions of §§590.100-590.180, and, upon completion of such training program, shall be certified by the director in the same manner as provided for peace officers.

Note: Jailers are authorized to serve arrest warrants on any person under an arrest warrant who surrenders himself to the facility.

3.10B Peace Officers Profiling for Traffic Stops (§590.650)

1. As used in this section “minority group” means individuals of African, Hispanic, Native American, or Asian descent.
2. Each time a peace officer stops a driver of a motor vehicle for a violation of any motor vehicle statute or ordinance or for an investigative purpose, that officer shall report the following information to the law enforcement agency that employs the officer:
 - 1) The age, gender and race or minority group of the individual stopped;
 - 2) The traffic violation or violations alleged to have been committed that led to the stop;
 - 3) Whether a search was conducted as a result of the stop;

- 4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;
- 5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered;
- 6) Whether any warning or citation was issued as a result of the stop;
- 7) If a warning or citation was issued, the violation charged or warning provided;
- 8) Whether an arrest was made as a result of either the stop or the search;
- 9) If an arrest was made, the offense charged; and
- 10) The location of the stop;

Such information may be reported using a format determined by the Department of Public Safety which uses existing citation and report forms.

3. 1) Each law enforcement agency shall compile the data described in subsection 2 of this section for the calendar year into a report to the attorney general.
 - 2) Each law enforcement agency shall submit the report to the attorney general no later than March first of the following calendar year.
 - 3) The attorney general shall determine the format that all law enforcement agencies shall use to submit the report.
4. 1) The attorney general shall analyze the annual reports of law enforcement agencies required by this section and submit a report of the findings to the governor, the general assembly and each law enforcement agency no later than June first of each year.
 - 2) The report of the attorney general shall include at least the following information for each agency.
 - A) the total number of vehicles stopped by peace officers during the previous calendar year;
 - B) the number and percentage of stopped motor vehicles that were driven by members of each particular minority group;
 - C) a comparison of the percentage of stopped motor vehicles driven by each minority group and the percentage of the state's population that each minority group comprises; and
 - D) a compilation of the information reported by law enforcement agencies pursuant to subsection 2 of this section.
5. Each law enforcement agency shall adopt a policy on race-based traffic stops that:
 - 1) Prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

- 2) Provides for periodic reviews by the law enforcement agency of the annual report of the attorney general required by subsection 4 of this section that:
 - A) determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency; and
 - B) if the review reveals a pattern, require an investigation to determine whether any peace officer of the law enforcement agency routinely stops members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;
- 3) Provides for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within ninety days of the review; and
- 4) Provides for annual sensitivity training for any employees who may conduct stops of motor vehicles regarding the prohibition against racial profiling.
- 5) The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and the development of effective, non-combative methods of carrying out law enforcement duties in a racially and culturally diverse environment.
6. If a law enforcement agency fails to comply with the provisions of this section, the governor may withhold any state funds appropriated to the noncompliant law enforcement agency.
7. Each law enforcement agency in this state may utilize federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.
8. A peace officer who stops a driver of a motor vehicle pursuant to a lawfully conducted sobriety check point or road block shall be exempt from the reporting requirements of subsection 2 of this section.

3.11 Training-Peace Officers-Arrest (§70.820)

1. Any law enforcement officer as defined by §556.061, full-time peace officer as defined by §590.100, of a county or a full-time officer of any political subdivision who is certified pursuant to Chapter 590, or a chief executive officer as defined by §590.100, of a county or any political subdivision, certified pursuant to Chapter 590, shall have the authority to respond to an emergency situation outside the boundaries of the political subdivision from

- which such peace officer's authority is derived. This section does not apply to any peace officer certified pursuant to subsection 6 of §590.105.
2. Before a peace officer shall have the authority to respond to an emergency situation outside the boundaries of the political subdivision from which the officer's authority is derived pursuant to subsection 1 of this section, the authority shall be first authorized by ordinance, order, or other ruling by the governing body of the political subdivision from which the officer derives such officer's authority and by the governing body of the political subdivision in which the emergency situation is alleged to be occurring and by the board of police established by §84.020 or by the board of police commissioners established by §84.350 if the officer derives his authority from either board or if the emergency situation is alleged to be occurring within the jurisdiction of either board.
 3. As used in this section, "emergency situation" means any situation in which the law enforcement officer has a reasonable belief that a crime is about to be committed, is being committed, or has been committed involving injury or threat of injury to any person, property, or governmental interest and such officer's response is reasonably necessary to prevent or end such emergency situation or to mitigate the likelihood of injury involved in such emergency situation. The determination of the existence of any emergency situation shall be at the discretion of the officer making the response or at the discretion of an officer or governmental officer of the political subdivision in which the emergency situation is alleged to be occurring.
 4. As used in this section, 'response' shall mean to take any and all action which the officer may lawfully take as if exercising his/her powers within his/her own jurisdiction.
 5. In addition to the emergency response powers prescribed in subsection 1 of this section, any peace officer of a county of the first classification with a charter form of government, or any peace officer of any political subdivision within any county of the first classification with a charter form of government, or any peace officer of any city not within a county, who has completed the basic peace officer training program pursuant to Chapter 590 may arrest persons who violate any provision of state law within the boundaries of any county of the first classification or of any city not within a county.
 6. In addition to the powers prescribed in subsections 1 and 5 of this section, §544.216, and any other arrest powers, a law enforcement officer or federal law enforcement officer as defined in subsection 8 of this section, may arrest on view, and without a warrant at any place within this state, any person the officer sees asserting physical force or using forcible compulsion for the purpose of causing or creating a substantial risk of death or serious physical injury to any person, or any person the officer sees committing a dangerous

- felony as defined in §556.061. Any such action shall be deemed to be within the scope of the officer's employment.
7. To provide assistance to law enforcement officers, a federal law enforcement officer shall have the same authority as a law enforcement officer where:
 - a. The federal law enforcement officer is rendering assistance at the request of any law enforcement officer of this state; or
 - b. The federal law enforcement officer is effecting an arrest or providing assistance as part of a bona fide task force or joint investigation in which law enforcement officers of this state are participating.
 8. A federal law enforcement officer is a person employed by the United States government who is empowered to effect an arrest with or without a warrant for violation of the United States Code and who is authorized to carry a firearm in the performance of the person's official duties as a federal law enforcement officer and includes a law enforcement officer as defined in §556.061.

3.12 Fresh Pursuit (§544.157)

1. Any law enforcement officer certified pursuant to Chapter 590 of any political subdivision of this state, any authorized agent of the Department of Conservation, any commissioned member of the Missouri Capitol Police, any commissioned member of the Missouri State Park Rangers and any authorized agent of the Missouri State Water Patrol in fresh pursuit of a person who is reasonably believed by such officer to have committed a felony in this state or who has committed, or attempted to commit, in the presence of such officer or agent, any criminal offense or violation of a municipal or county ordinance, or for whom such officer holds a warrant of arrest for a criminal offense, shall have the authority to arrest and hold in custody such person anywhere in this state. Fresh pursuit may only be initiated from within the pursuing peace officer's, conservation agent's, capitol police officer's, state park ranger's or water patrol officer's jurisdiction and shall be terminated once the pursuing peace officer is outside of such officer's jurisdiction and has lost contact with the person being pursued. If the offense is a traffic violation, the Uniform Traffic Ticket shall be used as if the violator had been apprehended in the municipality or county in which the offense occurred.
2. If such an arrest is made in obedience to a warrant, the disposition of the prisoner shall be made as in other cases of arrest under a warrant; if the violator is served with a Uniform Traffic Ticket, the violator shall be directed to appear before a court having jurisdiction to try the offense; if the arrest is without a warrant, the prisoner shall be taken forthwith before a judge of a court with original criminal jurisdiction in the county wherein such arrest was

made or before a municipal judge thereof having original jurisdiction to try such offense, who may release the person as provided in §544.455, conditioned upon such person's appearance before the court having jurisdiction to try the offense. The person so arrested need not be taken before a judge as herein set out if given a summons by the arresting officer.

3. The term 'fresh pursuit,' as used in this section, shall include hot or fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or is reasonably suspected of having committed a felony in this state, or who has committed or attempted to commit in this state a criminal offense or violation of municipal or county ordinance in the presence of the arresting officer referred to in subsection 1 of this section or for whom such officer holds a warrant of arrest for a criminal offense. It shall include also the pursuit of a person suspected of having committed a supposed felony in this state, though no felony has actually been committed, if there is reasonable ground for so believing. "Fresh pursuit" as used herein shall imply instant pursuit.
4. A public agency elected to institute vehicular pursuits shall adopt a policy for the safe conduct of vehicular pursuits by peace officers. Such policy shall meet the following minimum standards:
 - a. There shall be supervisory control of the pursuit;
 - b. There shall be procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit;
 - c. There shall be procedures for coordinating operation with other jurisdictions; and
 - d. There shall be guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

3.13 Private Person's Use of Force in Making an Arrest (§563.051)

A private person can be justified in using force to make an arrest in two situations:

1. A private person may justifiably use force in making an arrest or preventing escape if a law enforcement officer requests his/her assistance.
2. A private person acting on his/her own may justifiably use non-deadly force to make an arrest or prevent an escape if (s)he reasonably believes the suspect has committed an offense and if the suspect, in fact, has committed such offense. **Note** that a law enforcement officer need only reasonably believe the suspect has committed an offense in order to be able

to use force in making an arrest. A private citizen must be correct in his/her belief. In addition, a private person may only use such force as is immediately necessary to effect the arrest or prevent escape from custody. A private person may not use deadly force to effect an arrest or prevent an escape except in two situations:

1. A private person may use deadly force if (s)he is directed to do so by a law enforcement officer and if (s)he reasonably believes the use of deadly force is authorized under the circumstances.
2. A private person acting on his/her own can use deadly force to effect an arrest or prevent an escape only if (s)he reasonably believes the use of deadly force is immediately necessary to effect the arrest of someone who at that time and in his/her presence (a) committed or attempted to commit murder or a class A felony, or (b) is attempting to escape by using a deadly weapon.

3.14 Use of Force to Prevent Escape from Confinement (§563.056)

This section deals with the use of force by a guard or law enforcement officer in preventing escape from confinement.

Preventing escape from custody is covered in §563.046 (See ¶3.9). A guard or law enforcement officer may use non-deadly force when (s)he reasonably believes it to be immediately necessary to prevent escape from confinement or while in transit to or from confinement.

The use of deadly force to prevent escape from confinement is justified only if the guard or law enforcement officer reasonably believes there is a substantial risk the escapee will endanger human life or cause serious physical injury unless the escape is prevented.

This section does not apply to the use of force in enforcing discipline among prisoners. Section 216.445 (a pre-Code statute) provides for the use of force in maintaining discipline in a state correctional institute.

Note: Jailers may carry firearms when necessary for the proper discharge of their duties. Jailers may also arrest escaped prisoners and apprehend anyone aiding or abetting an escapee. (§221.515)

3.15 Use of Force of Persons with Responsibility for Care, Discipline or Safety of Others (§563.061)

This section lists situations in which persons with certain responsibilities for others may justifiably use physical force:

1. Parents, guardians, teachers, or other persons entrusted with the care and supervision of a minor or an incompetent person may use physical force on such minor or incompetent when:
 - a. they reasonably believe that the use of force is necessary to promote the welfare of the minor or incompetent, or to maintain reasonable discipline in a school; AND
 - b. the force used is not designed to cause or believed to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain or extreme emotional distress.
2. A warden or other authorized official of a jail, prison, or correctional institution may, in order to maintain order and discipline, use whatever physical force, including deadly force, is authorized by law.
3. A person responsible for the operation of a bus, airplane, or other carrier of passengers may use non-deadly force when (s)he reasonably believes that such force is necessary to prevent interference with its operation or to maintain order in the carrier. Deadly force is justified only when the person reasonably believes it is necessary to prevent death or serious physical injury.
4. A physician, and persons assisting at the direction of a physician, may use physical force when administering a recognized form of treatment and the physician reasonably believes such will promote the physical or mental health of the patient, and
 - a. the patient has consented, or if the patient is a minor or incompetent, the parent, guardian, or other person legally competent to consent on his/her behalf has consented; OR
 - b. the treatment is administered in an emergency and the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
5. A person can use physical force upon another if (s)he reasonably believes the other person is about to commit suicide or inflict serious physical injury upon himself/herself, and reasonably believes the use of the force is necessary to prevent such result.

**3.16 The Power of Search and Seizure for the Missouri Highway Patrol
(§43.200)**

This law gives the Patrol the authority to serve search warrants in conjunction with the sheriff or the sheriff's designee.

1. The members of the highway patrol may request that the prosecuting or circuit attorney apply for, and members of the highway patrol **may serve**, search warrants anywhere within the state of Missouri, provided the sheriff of the county in which the warrant is to be served, or his/her designee, **shall** be notified upon application by the applicant of the search warrant except for offenses pertaining to driving while intoxicated.
2. The sheriff or his/her designee **shall** participate in serving the search warrant except for offenses pertaining to driving while intoxicated. Any designee of the sheriff **shall** be a deputy sheriff or other person certified as a peace officer under Chapter 590.
3. **The sheriff shall always have a designee available.**

Chapter 4 **Attempt and Conspiracy**

4.1 Introduction

This chapter deals with the offenses of attempt and conspiracy. These are part of the general chapters of the Code because they apply to all offenses. An attempt or conspiracy to commit any offense is itself an offense. Attempts and conspiracies are called inchoate offenses because, in a sense, they are incomplete or preliminary offenses.

4.2 Attempt (§562.012) **Penalty Varies (See Below)**

Elements:

A person attempts to commit an offense when:

1. the person has a purpose to commit an offense; AND
2. the person performs an act which is a substantial step toward the commission of the offense.

Comments:

NOTE: The elements of each offense are laid out in chapters 5-19 of this Handbook. As discussed previously, the elements of each offense are established by statute. That is to say the statute will define what conditions or elements create a violation, an offense, of said statute. In general, every crime involves three elements: first, the act or conduct ("actus reus"); second, the individual's mental state at the time of the act ("mens rea"); and third, the causation between the act and the effect (typically either "proximate causation" or "but-for causation").

When the word "**and**" appears as an element, then all the elements must be present to constitute the offense. When "**or**" appears, each element alone would constitute the offense.

To be guilty of an attempt to commit an offense, the defendant must have as his/her purpose the occurrence of all the elements of the offense being attempted, and must take a substantial step toward carrying out that purpose.

A substantial step is conduct which is strongly corroborative of the defendant's purpose to commit the offense and moves him/her closer to the commission of the offense.

What acts will be sufficient for a substantial step will depend on the facts of the particular case. The following conduct in the appropriate circumstances could be substantial steps that are strongly corroborative of the defendant's criminal purpose:

1. lying in wait, searching for or following the contemplated victim of the offense;
2. enticing or seeking to entice the contemplated victim of the offense to go to the place contemplated for its commission;
3. reconnoitering the place contemplated for the commission of the offense;
4. unlawful entry of a structure, vehicle, or enclosure in which the offense will be committed;
5. possession of materials to be employed in the commission of the offense, which are specially designed for such unlawful use or which can serve no lawful purpose under the circumstances;
6. possession, collection, or fabrication of materials to be employed in the commission of the offense, at or near the place contemplated for its commission, where such possession, collection, or fabrication serves no lawful purpose under the circumstances;
7. soliciting another person, whether innocent or not, to engage in the offense.

Note that under the Code there are no such offenses as assault with intent to rape or assault with intent to rob. This type of conduct under the Code is prosecuted as attempted rape or attempted robbery.

Penalty:

Attempts to commit offenses are punished according to the seriousness of the offense attempted. The Revised Criminal Code retains the basic principle in the Current Code relating to felonies and Class A Misdemeanors, extends it to all felonies and misdemeanors, and restates it in general terms. An attempt or conspiracy to commit an offense shall be classified **one step lower** than the class provided for target offense.

Note: Some Attempts are specified offenses within the statute (i.e., attempted forcible rape), and the penalty is therefore not downgraded.

4.3 Conspiracy (§562.014)
Class C Felony

Elements:

A person commits the offense of conspiracy to commit, in any manner or for any purpose, an offense if:

1. the person agrees, with one or more persons
2. to commit any class A, B, or C felony offense, OR
3. any unclassified felony offenses if the maximum term of imprisonment for such unclassified felony exceeds ten years or more, AND
4. one or more of such persons do any act in furtherance of such an agreement.

Notes:

If a person conspires to commit a number of offenses, he or she can be found guilty of only one offense of conspiracy so long as such multiple offenses are the object of the same agreement.

No person shall be convicted of conspiracy to commit an offense if, after conspiring to commit the offense, he or she prevented the accomplishment of the objectives of the conspiracy under circumstances manifesting a renunciation of his or her criminal purpose.

A defendant cannot be charged or convicted of both the completed offense and a conspiracy to commit that offense.

Chapter 5

Homicide, Assaults and Kidnapping

(§565.001-§565.150)

5.1 Introduction

This chapter covers the homicide offenses, assault offenses, kidnapping, and related offenses.

5.2 First Degree Murder (§565.020)

Class A Felony (Penalty shall be death or life imprisonment without probation or parole if over 18 at the time of the commission of the offense (See comments))

Elements:

A person commits the offense of first degree murder if (s)he:

1. knowingly
2. causes the death of another
3. after deliberation* upon the matter.

Comments:

The death penalty is not a punishment option in every case of murder in the first degree. Unless there is at least one Statutory Aggravating Circumstance, the State cannot seek the death penalty. Further, the State is never required to seek death even if Aggravating Circumstances are present.

The jury in a death penalty case will first decide whether the defendant is guilty beyond a reasonable doubt of murder in the first degree. Only if the jury returns a verdict of guilty for murder one will that same jury consider the death penalty during the punishment phase of the trial. During this second stage of the trial the jury will hear evidence and argument as to aggravation and mitigation of

*Deliberation is defined as cool reflection for any length of time no matter how brief.

punishment from both sides. At the close of the punishment stage, the jury will return a verdict of life without parole or death.

The jury is never required to return a verdict of death even if they unanimously find the presence of one or more aggravating circumstances beyond a reasonable doubt. If the jury's verdict is death, the trial Judge may reverse that verdict and give the defendant life without parole.

Certain aggravating and mitigating factors are set out with the elements of first degree murder, above. The aggravating factors tend to make a killing more culpable, while the mitigating factors may indicate that the defendant is less deserving of severe punishment. **Many of these factors may be apparent to the officer who investigates the homicide.** Unless at least one of the statutory aggravating circumstances enumerated above is found beyond a reasonable doubt, the death penalty cannot be imposed.

All cases in which the death penalty is imposed are reviewed automatically by the Missouri Supreme Court. The court will consider whether the death sentence was imposed because of prejudice or passion, or was excessive or disproportionate when compared with the results in similar cases, and whether the evidence supports the finding of a statutory aggravating factor. The Supreme Court will then affirm the death sentence, re-sentence the defendant to life imprisonment without eligibility for parole, or remand the case to the trial judge for resentencing. **Effective August 28, 2001, the law was amended to provide that a defendant who is found to be mentally retarded, is not eligible to receive the death penalty. (§565.030)**

Note: Under current Missouri law, offenders younger than eighteen years of age cannot receive a sentence of death. If a person has not reached his or her eighteenth birthday at the time of the commission of the offense, the punishment shall be a term of life without eligibility for probation or parole (§565.034), life imprisonment with eligibility for parole, or not less than thirty years and not to exceed forty years imprisonment. (§565.033).

Aggravating and Mitigating Circumstances

The following circumstances shall be considered by the judge or jury in assessing the penalty for first degree murder for an offender who was eighteen years of age on or before the commission of the offense was committed.

Note: In 2016, the Missouri General Assembly amended the available punishment for first degree murder committed by an offender who had not reached his/her eighteenth birthday at the time of the commission of the offense and created a

distinct procedure to be followed if the State was seeking a sentence of life without eligibility for probation or parole. See §565.034.

5.2A Aggravating Circumstances (§565.032.2)

1. The offense was committed by a person with a prior record of conviction for murder in the first degree, or the offense was committed by a person who has one or more serious assaultive criminal convictions.
2. The murder in the first degree offense was committed while the offender was engaged in the commission or attempted commission of another unlawful homicide.
3. The offender by his/her act of murder in the first degree knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
4. The offender committed the offense of murder in the first degree for himself/herself or another, for the purpose of receiving money or any other thing of monetary value from the victim of the murder or another.
5. The murder in the first degree was committed against a judicial officer, former judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney; assistant prosecuting attorney or former assistant prosecuting attorney, assistant circuit attorney or former assistant circuit attorney; peace officer or former peace officer, elected official or former elected official during or because of the exercise of his/her official duty.
6. The offender caused or directed another to commit murder in the first degree or committed murder in the first degree as an agent or employee of another person.
7. The murder in the first degree was outrageously or wantonly vile, horrible or inhuman in that it involved torture, or depravity of mind.
8. The murder in the first degree was committed against any peace officer or fireman while engaged in the performance of his/her official duty.
9. The murder in the first degree was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement.
10. The murder in the first degree was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody, in a place of lawful confinement, of himself/herself or another.
11. The murder in the first degree was committed while the defendant was engaged in the perpetration, or in the attempt to perpetrate, a **felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any felony offense in Chapter 195 or Chapter 579.**

12. The murdered individual was a witness or potential witness in any past or pending investigation or past or pending prosecution, and was killed as a result of his/her status as a witness or potential witness.
13. The murdered individual was an employee of an institution or facility of the Department of Corrections of this state or local correction agency and was killed in the course of performing his/her official duties, or the murdered individual was an inmate of such institution or facility.
14. The murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus, or other public conveyance.
15. The murder was committed for the purpose of concealing or attempting to conceal any felony offense defined in Chapter 195 or Chapter 579.
16. The murder was committed for the purpose of causing or attempting to cause a person to refrain from initiating or aiding in the prosecution of a felony offense defined in Chapter 195 or Chapter 579.
17. **The murder was committed during the commission of an offense, which is part of a pattern of criminal street gang activity.**

5.2B Mitigating Circumstances (§565.032.3)

1. The defendant has no significant history of prior criminal activity.
2. The murder in the first degree was committed while the defendant was under the influence of an extreme mental or emotional disturbance.
3. The victim was a participant in the defendant's conduct or consented to the act.
4. The defendant was an accomplice in the murder in the first degree committed by another person and his participation was relatively minor.
5. The defendant acted under extreme duress or under the substantial domination of another person.
6. The capacity of the defendant to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law was substantially impaired.
7. The age of the defendant at the time of the offense.

Example:

The defendant grabs a woman, drags her into the bushes and rapes her. She begins to scream. The defendant, intending only to keep her quiet, hits her and she dies. The defendant is guilty of only second degree murder. Had he been deliberate in causing the woman's death he would be guilty of first degree murder with the aggravating circumstances of rape making the death penalty possible.

Cross Reference:

Knowingly

**5.3 Murder In The Second Degree (§565.021)
Class A Felony****Elements:**

A person commits the offense of murder in the second degree if (s)he:

1. a. i. knowingly causes the death of another person; OR
 ii. causes the death of another person with the purpose of causing serious physical injury; OR
2. a. causes the death of another person,
 b. i. while committing or attempting to commit any felony; OR
 ii. while in the immediate flight from the perpetration of any felony or attempted felony.

Definitions:

Physical injury-slight impairment of any function of the body or temporary loss of use of any part of the body (Code definition).

Serious physical injury-physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

Comments:

The wording of the offense of second degree murder has been modified slightly to eliminate references to reckless killings which are chargeable under the manslaughter statute. The application and coverage of the offense remains essentially the same as under prior law covering second degree murder. This statute covers intentional killings which are not first degree murder, homicides committed during the perpetration or flight from a felony or attempted felony, and killings when the perpetrator only intends to do serious bodily harm to the victim.

In all situations under this section, the defendant must not act under the influence of sudden passion arising from adequate cause. This means that the killing was not done as a result of provocation by the victim which would have impaired an ordinary person's capacity for self-control. A killing done under adequate provocation is usually manslaughter.

Examples:

1. Defendant steals a car, which is parked on the street. (S)He sees a police car pursuing him/her and speeds up. (S)He passes another car at high speed,

forcing it off the road, killing the driver. Defendant may be guilty of second degree murder.

2. Defendant grabs a broken beer bottle and slashes victim. Medical assistance is not readily available and victim dies from excessive bleeding. Defendant is probably guilty of second degree murder in having the purpose of causing serious physical injury and not death.

5.4 Voluntary Manslaughter (§565.023) Class B Felony

Elements:

A person commits the offense of voluntary manslaughter if (s)he:

- A. 1. causes the death of another person by
 2. a. being practically certain of taking the victim's life; OR
 - b. having the conscious object of causing serious physical injury;AND
 3. did so under the influence of sudden passion arising from adequate cause; OR
- B. 1. knowingly
 2. assisting another
 3. in the commission of self-murder (i.e. suicide).

Comments:

Voluntary manslaughter covers intentional killings, not justified or excusable, which are not covered by first or second degree murder because of sudden passion. If the perpetrator intends to kill or seriously injure the victim but does so due to provocations of the victim which cause a reasonable person to lose self-control (s)he may be guilty of voluntary manslaughter instead of murder.

Examples:

1. The defendant comes home from work unexpectedly and finds his wife in bed with another man. The defendant becomes enraged and immediately shoots the man. He may be guilty of voluntary manslaughter committed in the heat of passion.
2. The defendant is at a bar. During an argument he is struck in the face by an acquaintance, breaking defendant's nose. The defendant is determined to get even and returns the following evening and uses a broken beer bottle in an attempt to scar the acquaintance who then dies from massive bleeding. The defendant is probably guilty of at least second degree murder. There was adequate provocation in being struck, but by waiting for a day the killing was not done under "sudden passion."

Note that the intent to maim suffices.

Definitions:

Adequate cause-that which would reasonably produce a degree of passion in a person of ordinary temperament sufficient to substantially impair an ordinary person's capacity for self-control.

Sudden passion-out of provocation by the victim or another acting with the victim whose passion arises at the time of the offense and is not solely the result of former provocation.

5.5 Involuntary Manslaughter in the First Degree(§565.024)
Penalty Varies (See Below)

Elements:

A person commits the offense of involuntary manslaughter in the first degree if (s)he:

1. Recklessly causes the death of any person.

Penalty:

The offense of involuntary manslaughter in the first degree is a **class C felony**, unless the victim is intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which case it is a **class B felony**.

5.6 Involuntary Manslaughter in the Second Degree (§565.027)
Penalty Varies (See Below)

Elements:

A person commits the offense of involuntary manslaughter in the second degree if (s)he:

1. Acts with criminal negligence;
2. to cause the death of any person.

Penalty:

The offense of involuntary manslaughter in the second degree is a **class E felony**, unless the victim is intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which case it is a **class D felony**.

Comments:

Involuntary manslaughter covers all non-intentional killings, and is classified into involuntary manslaughter in the first degree and involuntary manslaughter in the second degree.

Involuntary manslaughter in the first degree applies to two circumstances. It applies to a death that results from a defendant consciously disregarding a substantial and unjustifiable risk that is a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Involuntary manslaughter in the second degree applies to a situation where death results from an act by an individual who fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow such act, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. This statute may cover a broad range of activity, but appears to be particularly designed to address conduct involving a motorist who commits a serious traffic violation that results in the death of another person. Such conduct may not rise to the level of recklessness so as to support a charge of involuntary manslaughter in the first degree, but may constitute criminal negligence, thus supporting the charge of involuntary manslaughter in the second degree.

Examples:

1. Donald is driving his car on a street where children frequently play. He decides to see how fast his new car can go from 0 to 60 m.p.h. While watching the speedometer, he gets up to 58 m.p.h. (in a 25 m.p.h. zone) and hits and kills a child playing in the street. He could easily have seen and avoided the child if he were paying attention to pedestrians and driving the speed limit. Donald is probably guilty of involuntary manslaughter in the first degree.

5.7 Assault

Introduction

Assault offenses are organized into four degrees of assault. For reporting purposes and because domestic situations involve very different dynamics, domestic assault has been maintained as a distinct category, also with four degrees.

The assault offenses include sentencing enhancements, using a statutorily-defined “special victim” category. In conjunction with the four degrees of assault, this “special victim” classification allowed the elimination of many stand-alone assault offenses.

Any special victim as defined under §565.002 shall not be required to reveal any current address or place of residence except to the court in camera for the purpose of determining jurisdiction and venue. (§565.058)

For the purpose of the assault offenses, a “special victim” includes the following (§565.002):

- a law enforcement officer in the performance of official duties or as a direct result of such official duties;
- Emergency personnel (paid or volunteer firefighter, emergency room, hospital, or trauma center personnel, or EMT) in the performance of official duties or as a direct result of such official duties;
- a probation or parole officer in the performance of official duties or as a direct result of such official duties;
- an elderly person;
- a person with a disability;
- a vulnerable person;
- any jailer or corrections officer of the state or one of its political subdivisions in the performance of official duties or as a direct result of such official duties;
- a highway worker in a construction or work zone;
- any utility worker (any employee of a private, municipal, or cooperatively owned utility that provides gas, heat, electricity, water, steam, telecommunication services, or sewer services, including any person employed under contract) in the performance of his or her job duties;

- any cable worker (any employee of a cable operator, including any person employed under contract) in the performance of his or her job duties; and
- any employee of a mass transit system (including any employee of a public bus or light rail company) in the performance of his or her job duties.

5.8 First Degree Assault (§565.050)

Penalty Varies (See Below)

Elements:

A person commits the offense of first degree assault if (s)he:

1. attempts to kill another person; or
2. knowingly causes or attempts to cause serious physical injury to another person.

Penalty:

First Degree Assault is a Class B Felony, unless serious physical injury has been inflicted, or it is to a special victim, then it is a Class A Felony.

5.9 Second Degree Assault (§565.052)

Penalty Varies (See Below)

Elements:

A person commits the offense of second degree assault if (s)he:

1. attempts to kill or knowingly causes or attempts to cause serious physical injury under the influence of sudden passion arising out of adequate cause; or
2. attempts to cause or knowingly causes physical injury by means of a deadly weapon or dangerous instrument; or
3. recklessly causes serious physical injury; or
4. recklessly causes physical injury by means of discharging a firearm.

Penalty:

Second Degree Assault is a Class D Felony. If the person is a special victim, then it is a Class B Felony.

Definitions:

Deadly weapon-is any firearm, loaded or unloaded, or any weapon from which a shot, readily capable producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy club, blackjack, or metal knuckles.

Dangerous instrument-any instrument, article, or substance capable of causing death or serious physical injury in the circumstances in which it is used.

5.10 Third Degree Assault (§565.054)

Penalty Varies (See Below)

Elements:

A person commits the offense of third degree assault if (s)he knowingly causes physical injury to another person.

Penalty:

Third Degree Assault is a Class E Felony. If the person is a special victim, then it is a Class D Felony.

5.11 Fourth Degree Assault (§565.056)

Penalty Varies (See Below)

Elements:

A person commits the offense of fourth degree assault if (s)he:

1. attempts to cause or recklessly causes physical injury, physical pain, or illness; or
2. with criminal negligence causes physical injury by means of a firearm; or
3. purposely places another person in apprehension of immediate physical injury; or
4. recklessly engages in conduct which creates a substantial risk of death or serious physical injury; or
5. knowingly causes physical contact with a disabled person, which a reasonable person, who is not disabled, would consider offensive or provocative; or
6. knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative.

Penalty:

Fourth Degree Assault is a Class A Misdemeanor if a person violates subdivisions 1, 2, 4, or 5 above. It is a Class C Misdemeanor if a person violates subdivisions 3 or 6 above unless the victim is a special victim then it's a Class A Misdemeanor.

Comments:

Paragraph 5.17 contains a chart which will make it easier to determine which degree of assault has been committed. The chart covers only the most frequently encountered assaults.

The important factor in understanding the assault offenses is in determining the **severity of the injury**: serious physical injury, physical injury, physical contact, or apprehension of immediate physical injury **or** if the victim is a special victim.

Definitions:

Serious physical injury-physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

Physical injury-slight impairment of any function of the body or temporary loss of use of any part of the body.

5.12 Comments on Assault

The following analysis of assaults is based on the type of injury inflicted on the victim. Injury (or lack thereof) is usually the most visible element of an assault case. Thus, this approach should facilitate understanding the various assault statutes.

5.13 Some Assaults Causing Death Are Almost Always a Homicide Offense.

(See ¶5.2 Through ¶5.6)

5.14 Assualts Involving Serious Physical Injury

Some assaults involve the infliction of serious physical injury. Acts which cause such injuries will usually either be first or second degree.

An individual who knowingly inflicts serious physical injury commits first degree assault. First degree assault is normally a class B felony, however, if the defendant inflicts serious physical injury or to a special victim, it is a class A felony.

A person who causes serious physical injury may be guilty of an assault even though (s)he did not knowingly or purposely inflict the injury. If the defendant recklessly causes serious physical injury, the person commits second degree assault. Suppose Donald and David are racing their cars down a city street. John, a pedestrian, is in a crosswalk crossing the street. Donald sees John, but thinks he can miss him, and he does not want to lose the race. Donald runs a stop sign at 80 m.p.h., strikes John and seriously injures him. Donald is guilty of second degree assault.

5.15 Assualts Involving Physical Injury

A person may commit an assault if (s)he inflicts or attempts to inflict physical injury on another. If the defendant is attempting to kill the victim and physically injures him/her the defendant commits first degree assault. Otherwise, assaults involving physical injury will be second, third, or fourth degree assaults.

If the defendant knowingly or purposely causes physical injury to another, (s)he has committed at least a third degree assault. If (s)he knowingly causes physical injury with a deadly weapon or dangerous instrument the offense is second degree assault. Thus, if Donald attacks John, leaving John with a black eye and a bloody nose, Donald commits third degree assault. However, Donald would have committed second degree assault if he had used a blackjack to inflict those same injuries.

An individual who recklessly causes serious physical injury to another may also be guilty of an assault. If the victim suffers serious physical injury because of the defendant's recklessness, the defendant commits second degree assault. Suppose David and Donald are drag racing in a busy part of town. Donald sees John, a pedestrian, in the crosswalk but thinks he can avoid hitting him. Donald is going 80-85 m.p.h. in a zone where the speed limit is 40 m.p.h. Donald's car strikes John causing him serious injuries. Donald has committed second degree assault by recklessly causing serious physical injury to John.

One who with criminal negligence causes physical injury to another with a firearm, commits a fourth degree assault even though the injury was unintentional.

Suppose Donald is preparing to go hunting, and is very careless while loading his rifle. If his rifle discharges because of his carelessness, and someone else is injured, Donald has committed fourth degree assault.

5.16 Assualts Where No Physical Injury Results

Offenses Where No Physical Injury Is Intended and None Occurs

An individual may commit an assault even though (s)he intends to cause no physical injury and none results. Purposely frightening another by placing him/her in fear of immediate physical injury is a fourth degree assault. No physical injury need actually occur and the defendant need not have the intent to cause physical injury. Suppose Donald swings a stick at John, not with a purpose to hit John, but to make him believe he will be hit. Although Donald stops before striking John, John in fact was in fear of being hit. Donald has committed fourth degree assault since he purposely placed John in fear of physical injury.

A person also commits an assault if (s)he recklessly creates a risk of death or serious physical injury to another. This offense is sometimes called "reckless endangerment" and is a fourth degree assault. If the defendant's recklessness actually causes serious physical injury, the act will be a second degree assault.

Suppose, in the previous drag racing example, the pedestrian had not been hit or injured at all, that Donald missed him, but only because the pedestrian jumped out of the way at the last second. Donald would have committed reckless endangerment, a fourth degree assault, even though he inflicted no injury because he recklessly created a grave risk of death or serious physical injury.

Purposely or knowingly touching another, knowing that the touching will be regarded as offensive or provocative, even though no injury will result, may be an assault. For example, suppose Donald intentionally pushes John away from the bar so that Donald can get faster service. Donald does not intend physically to injure John. John is in fact offended by Donald's actions. Donald has committed an assault (fourth degree) since he knowingly caused physical contact with John that he knew John would find offensive.

The intentional offensive touching section may be useful in allowing official intervention into situations that have the potential to become serious problems.

The offensive touching section may also cover those offensive touching's not covered by chapter 6 of this handbook (Sexual Offenses). For example, if Donald kisses Sally without her consent, no sexual offense is committed. The act may be an offensive touching though, and Donald may have committed fourth degree assault.

Assaults Where Physical Injury Is Intended but None Occurs.

An assault may be committed if the defendant intends to cause physical injury but none results. A defendant who attempts to cause physical injury, but inflicts no

injury, is guilty of fourth degree assault, but if (s)he attempts to cause physical injury with a deadly weapon or dangerous instrument (s)he is guilty of second degree assault. (S)He commits first degree assault if (s)he attempts to inflict serious physical injury regardless of whether or not a deadly weapon or dangerous instrument was used. Suppose Donald tries to hit John with his fist but misses him. Donald has committed fourth degree assault even though no injury resulted. The attempt to inflict injury is enough for assault. If Donald had tried to hit John with an axe rather than his fist, the offense would have been first degree assault. Donald's act indicates he intended to cause serious physical injury rather than physical injury, making the offense a first degree assault.

If a defendant attempts to kill or knowingly causes or attempts to cause serious physical injury to another (s)he commits a first degree assault. The injury need not be actually accomplished to complete the offense.

5.17Chart

The chart which follows is intended as a quick reference aid in deciding what assault offense has been committed. It does not include all assault offenses. It does not include attempts or assaults where an injury was threatened but none results.

INJURY CAUSED

DEFENDANT'S MENTAL STATE	Death	Serious Physical Injury	Physical Injury	Offensive Contact	Apprehension Of Physical Injury
Knowingly Causes	See Homicide Statutes	First Degree	Second Degree if the defendant uses a deadly weapon/dangerous instrument	Fourth Degree	Fourth Degree Purposely Causes
OR					
Knowingly Causes	See Homicide Statutes	First Degree	Third Degree	Fourth Degree	No Assault
Recklessly Causes	See Homicide Statutes	Second Degree	Fourth Degree / Second Degree if by firearm	No Assault	No Assault
With Criminal Negligence Causes	See Homicide Statutes	No assault with only criminal negligence	Fourth Degree if caused by a firearm	No Assault	No Assault

5.18 Consent as a Defense (§565.010)**Elements of the Defense:**

When threatened or inflicted physical injury is an element of an offense, consent to these actions is a defense if:

1. the injury inflicted or threatened is not serious physical injury; OR
2. the injury inflicted or threatened is a reasonably foreseeable hazard of the victim's job or employment; OR
3. the injury inflicted or threatened is a reasonably foreseeable hazard of engaging in a sport or lawful athletic contest; OR
4. the consent established a justification for the conduct under Chapter 563.

Comments:

As a rule of thumb, a victim may not consent to serious physical injury. However, an individual may consent to serious physical injury in three instances. **First**, if the injury is a reasonably foreseeable hazard of the victim's employment, (s)he may be deemed to consent to the injury by accepting the employment. For example, injuries inflicted during military training exercises are foreseeable hazards.

Second, a victim can consent to a risk of serious physical injury that results from lawful athletic events. **Last**, if the consent amounts to a justification, a victim may consent to serious physical injury. The major area within this last exception will probably be medical treatment; so that a victim-patient can lawfully consent to surgery, etc.

A victim must be legally competent to consent to a threatened or inflicted injury. Also, if consent is given because of a threat of force, duress, or deception the consent is not a defense to an assault charge.

Cross Reference:

Justification (chapter 3 of this Handbook)
Serious physical injury
Physical injury
Consent

Related Offenses:

First degree assault	¶5.8
Second degree assault	¶5.9
Third degree assault	¶5.10

Fourth degree assault ¶5.11

5.19 Tampering with a Judicial Officer (§575.095)
Class D Felony

Elements:

A person commits the offense of tampering with a judicial officer if (s)he:

1. with the purpose to harass, intimidate, or influence a judicial officer in the performance of his/her official duties:
 - a. threatens harm to the judicial officer or his/her family; OR
 - b. causes harm to the judicial officer or his/her family; OR
 - c. uses force, threats, or deception against a judicial officer or his/her family; OR
 - d. offers, conveys, or agrees to convey any direct or indirect benefit on the judicial officer or his/her family; OR
 - e. engages in conduct reasonably calculated to harass or alarm the judicial officer or his/her family.

Comments:

A judicial officer will include a judge, arbitrator, special master, juvenile officer, deputy juvenile officer, state prosecuting or circuit attorney, state assistant prosecuting or circuit attorney, juvenile court commissioner, state probation or parole officer, or referee.

5.20 Harassment

Introduction:

The offense of harassment illustrates several universal themes throughout the Revised Criminal Code. In the pre-2017 code, there were six distinct ways to commit the offense of harassment. Under the Revised Criminal Code, this offense is reorganized to enhance clarity. The offense is now divided into two degrees, and the elements of the prohibited acts are restated in clear, concise language.

Definition:

“Emotional distress:” something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day-to-day living.

5.21 Harassment First Degree (565.090)
Class E Felony**Elements:**

A person commits the offense of harassment first degree when, without good cause, (s)he engages in any act with the purpose to cause emotional distress to another person, **and** such act does cause such person to suffer emotional distress.

5.22 Harassment Second Degree (565.091)
Penalty Varies (See Below)**Elements:**

A person commits the offense of harassment second degree when, without good cause, (s)he engages in any act with the purpose to cause emotional distress to another person.

Penalty:

Harassment in the second degree is a class A misdemeanor, unless the person has previously pleaded guilty to or been found guilty of a violation of this section, of any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which if committed in this state would be chargeable or indictable as a violation of any offense listed in this subsection, in which case it is a class E felony.

Comments:

This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violations of federal, state, county, or municipal law.

5.23 Cross Burning (§574.140)
Penalty Varies (See Below)

A person commits the offense of cross burning if (s)he burns, or causes to be burned, a cross with the purpose to frighten, intimidate, or cause emotional distress to any person or group of persons.

Penalty:

Class A Misdemeanor for first offense, Class E felony for subsequent offense.

5.24 Offenses Involving Unlawful Restraint (§556.101) and Kidnapping

Introduction:

Sections 565.110-565.130, prohibit unlawful interference with another person's liberty without lawful authority or the victim's consent. Lack of consent results from: (1) forcible compulsion, or (2) incapacity to consent. A person is deemed incapable of consent if the person is under the age of 14; or incapable of giving consent. If the unlawful restraint creates a risk of serious physical injury, a higher penalty is authorized under §565.120, Kidnapping in the second degree.

5.25 Kidnapping in the First Degree (§565.110)

Penalty Varies (See Below)

Elements:

A person commits the offense of kidnapping in the first degree if (s)he:

1. unlawfully removes another from where (s)he is found; OR
2. unlawfully confines another for a substantial period, for the purpose of:
 - a. holding for ransom or reward, or for any act to be performed or not performed for the release; or
 - b. using a person as a shield or as a hostage; or
 - c. interfering with the performance of any governmental or political function; or
 - d. facilitating the commission of any felony or flight thereafter; or
 - e. inflicting physical injury on or terrorizing the victim or another.

Penalty:

Kidnapping in the First Degree is a Class A Felony, unless committed per subsection d. or e. above, in which case it is a class B felony.

5.26 Kidnapping in the Second Degree (565.120)

Class D Felony

Elements:

A person commits the offense of kidnapping in the second degree if (s)he:

1. Knowingly restrains another person unlawfully and without consent
2. So as to interfere with his or her liberty; and
3. Exposes him or her to substantial risk of serious physical injury.

5.27 Kidnapping in the Third Degree (565.130)
Penalty Varies (See Below)**Elements:**

A person commits the offense of kidnapping in the third degree if (s)he:

1. Knowingly restrains another person unlawfully and without consent
2. So as to interfere with his or her liberty.

Penalty:

Kidnapping in the Third Degree is a Class A Misdemeanor. If the victim is removed from this state, then it is a Class E Felony.

Examples:

1. Donald carries off a small child who is playing in her front yard, intending to drive the child to his hideout and hold her for ransom; but the police apprehend him before he reaches his hideout with the victim. Donald is guilty of kidnapping 1st degree because he removed the victim, without consent, for the purpose of holding the child for ransom.
2. Donald is a fugitive from the police, having robbed a bank several weeks ago. As the police are closing in on him, he runs inside a residence and holds the family inside at gunpoint for several hours. At one point he yells to the police, "I'll let the kids go if you give me a car and a ten-minute head start." Donald is guilty of kidnapping 1st degree because he confined his victims for a substantial period for the purpose of receiving something in return for their release.

Cross References:

Purpose

Consent

Lack of consent

Related Offenses:

Interference with custody

¶5.29

5.28 Child Kidnapping (§565.115)
Class A Felony

Elements:

A person commits the offense of child kidnapping if such person is not a relative of the child within the third degree and such person:

1. unlawfully removes a child under the age of fourteen without the consent of such child's parent or guardian from the place where such child is found; OR
2. unlawfully confines a child under the age of fourteen without the consent of such child's parent or guardian.

Note: In determining whether the child was removed or confined unlawfully, it is an affirmative defense that the person reasonably believed that the person's actions were necessary to preserve the child from danger to his or her welfare.

5.29 Interference with Custody (§565.150)
Penalty Varies (See Below)

Elements:

A person commits the offense of interference with custody if (s)he:

1. takes or entices from lawful custody
2. any person entrusted to the custody of another person or institution by court order
3. knowing that (s)he has no right to do so.

Penalty:

Interference with custody is a class A misdemeanor, unless the person taken or enticed away from legal custody is removed from this state, detained in another state, or concealed in which case it is a class E felony.

5.30 Parental Kidnapping (§565.153)
Penalty Varies (See Below)

Elements:

A defendant having the right of custody of a child commits the offense of parental kidnapping if (s)he:

1. removes, takes, detains, conceals, or entices away that child within or without the State;

2. without good cause; AND
3. with the intent to deprive the custody right of another person, or a public agency also having a custody right to that child.

Penalty:

Parental Kidnapping is a class E felony unless:

1. the child is concealed or detained for 60 to 119 days, in which case it is a class D felony; OR
2. the child is concealed or detained for 120 days or more, in which case it is a class B felony.

5.31 Child Abduction (§565.156)**Class E Felony****Elements:**

A person commits the offense of child abduction if (s)he:

1. intentionally takes, detains, entices, conceals, or removes a child from a parent after being served with process in an action affecting marriage or paternity, but prior to the issuance of a temporary or final order determining custody; OR
2. at the expiration of visitation rights outside the State, intentionally fails or refuses to return, or impedes the return of the child to the legal custodian in Missouri; OR
3. conceals, detains, or removes the child for payment (or promise of payment) at the instruction of a person who has no legal right to custody; OR
4. retains in this state for 30 days a child removed from another state without the consent of the legal custodian or in violation of a valid court order of custody; OR
5. having legal custody of the child pursuant to a valid court order removes, takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody or visitation rights of another person, without obtaining written consent as is provided under §452.377.

NOTE: As used in the above-referenced offenses, "parent" means either a biological parent or a parent by adoption. "Person having a legal right of custody" means a parent or legal guardian of the child. "Child" means a person under 17 years of age.

Defenses (§565.160):

The following are considered absolute defenses to the offenses of parental kidnapping and child abduction.

1. The person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except where a person is charged with child abduction, because even though (s)he has legal custody (s)he has taken the child away somewhere without obtaining written consent as provided in §452.377; OR
2. The person had physical custody of the child or was exercising court-ordered visitation rights and failed to return the child as a result of circumstances beyond his/her control, and the person notified or made a reasonable attempt to notify the other person or legal custodian of the child of such circumstances within 24 hours after visitation expired; OR
3. The person was fleeing an incident or pattern of domestic violence.

Comments:

Before the enactment of these statutes, it was very difficult for law enforcement officers to act when one parent took a child from the other parent before a court order was entered as to legal custody. If a parent takes a child from the jurisdiction in response to being served with process in a dissolution or custody case, (s)he can be prosecuted. These provisions make it possible to prosecute the legal custodian of the children if (s)he refuses to honor the provisions for visitation granted another person.

These sections make it possible for others to be prosecuted for assisting in a kidnapping or abduction of the child. For example, if stepparents or neighbors help to conceal the identity of a child, or if they give false information to law enforcement authorities as to a child's whereabouts, they could potentially be prosecuted for assisting the principals in the offense.

Examples:

1. Inez is an incompetent confined to a mental institution by court order. Her husband sneaks her out of the institution and drives her to the next state. He is guilty of interference with custody. Since Inez was removed from the state, the offense is a class E felony.
2. Hal and Wendy are divorced, and the court gave custody of the children to Hal. Wendy drives by Hal's house while Hal is not home and takes the children to her home. Wendy is guilty of interference with custody for removing the children from the court-ordered custody of her husband.

3. Alan and Chris are separated and Chris is caring for the couple's small child. Alan, when served with dissolution papers, picks up the child from school and drives to his parents' house. He is guilty of child abduction or parental kidnapping.
4. Joan and Bob are divorced and Joan has custody of the two children. Bob has visitation one weekend a month and for one month during the summer. Joan decides to take the children with her to Europe for the summer, to deprive Bob of his time with them. She is guilty of child abduction.

Cross References:

Knowingly

Related Offenses:

Kidnapping 1st	¶5.25
Kidnapping 2nd	¶5.26
Kidnapping 3rd	¶5.27

5.32 Infants Protection Act (§565.300)**Class A Felony****Elements:**

A defendant is guilty of the offense of infanticide if such person:

1. purposely
2. causes the death of a living infant
3. by an overt act performed when
 - a. the infant is partially born; OR
 - b. the infant is born.

Definitions:

“Born” means complete separation of an intact child from the mother regardless of whether the umbilical cord is cut or the placenta detached.

“Living infant” means a human child, born or partially born, who is alive, as determined in accordance with the usual and customary standards of medical practice and is not dead as determined pursuant to §194.005 relating to the determination of the occurrence of death, and has not attained the age of thirty days post birth.

“Partially born” means partial separation of a child from the mother with the child’s head intact with the torso. If vaginally delivered, a child is partially separated from the mother when the head in a cephalic presentation, or any part of the torso above the navel in a breech presentation is outside the mother’s external cervical. If delivered abdominally, a child is partially separated from the mother when the child’s head in a cephalic presentation, or any part of the torso above the navel in a breech presentation is outside the mother’s external abdominal wall.

Comments:

This statute prohibits the controversial partial birth abortion procedure. Note, that a physician is not deemed criminally responsible under this section if (s)he is acting to save the life of the mother of the unborn child, or the life of an unborn or partially born child of the same pregnancy. Furthermore, a mother cannot be held criminally responsible under this statute if the physician is not held criminally responsible. This section is also not applicable when a legal abortion is performed and the act causing death occurs prior to the child being partially born, even if death occurs after the child is partially born.

Note on applicability of this statute: A federal district court has issued a temporary restraining order enjoining enforcement of this law based upon its questionable constitutionality, and resolution of that matter is still pending. Therefore, as of this writing, this section is unenforceable.

5.33 Abuse of an Elderly, Disabled, or a Vulnerable Person (§565.184)
Class A Misdemeanor

Elements:

A person commits the offense of abuse of an elderly person, a person with a disability, or a vulnerable person if (s)he:

1. Purposely
2. Engages in conduct involving more than one incident
3. That causes emotional distress to an elderly, disabled, or vulnerable person; OR
4. Intentionally
5. Fails to provide care, goods or services to an elderly, disabled, or vulnerable person; AND

6. the result would cause a reasonable elderly, disabled or vulnerable person to suffer physical or emotional distress; OR
7. Knowingly
8. Acts or fails to act in a manner
9. Which results in a substantial risk to life, body or health of an elderly, disabled or vulnerable person.

Comments:

Nothing in this section shall be construed to mean that an elderly person, a person with a disability, or a vulnerable person is abused solely because such person chooses to rely on spiritual means through prayer, in lieu of medical care, for his or her health care, as evidence by such person's explicit consent, advance directive for health care, or practice.

**5.34 Unlawful posting of certain information over the internet
 (§565.240)**

Penalty Varies (See Below)

A person commits the offense of unlawful posting of certain information over the internet if (s)he knowingly posts the:

1. name,
2. home address,
3. Social Security number,
4. Telephone number,
5. Or any other personally identifiable information of any person on the internet intending to cause great bodily harm or death or threatening to cause great bodily harm or death to such person.

This offense is a class C misdemeanor. However, the offense is a class E felony if the person knowingly posts the above information of any law enforcement officer, corrections officer, parole officer, judge, commissioner, or prosecuting attorney intending to cause great bodily harm or death or threatening to cause great bodily harm or death.

Chapter 6 Sexual Offenses (Chapter 566)

6.1 Introduction

Prior to the enactment of the Revised Criminal Code, previous legislation was passed renaming certain sexual offenses to provide a logical progression of degrees and lesser-included offenses. These changes in offense nomenclature are consistent with the universal organizational changes taken in the final Revised Criminal Code. Under the Revised Criminal Code, forcible rape is reclassified as “rape in the first degree,” while “sexual assault” is reclassified as “rape in the second degree.”

Aggravated Sexual Offense is defined and included in each individual offense (§566.010).

For there to be an “**aggravated sexual offense**,” the defendant had to:

- a) Inflict serious injury;
- b) Display a deadly weapon or dangerous instrument in a threatening manner;
- c) Subject the victim to sexual or deviate sexual intercourse with more than one person;
- d) Be found guilty previously of specified sexual offenses;
- e) Commit the offense as part of an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity (formerly “ritual”); or
- f) Engage in the act that constitutes the offense with a person with whom the actor bears a specified familial relationship (incest).

6.1A Mistake as to age (§566.020)

1. Whenever in Chapter 566 the criminality of conduct depends upon a child younger than fourteen, it is no defense that the defendant believed the child to be older.
2. Whenever in Chapter 566 the criminality of conduct depends upon a child being under seventeen years of age, it is an affirmative defense that the

- defendant reasonably believed that the child was seventeen years of age or older.
3. Consent is not a defense to a sexual offense if the victim is less than 14 years of age.

6.1B Sexual Offenses Definitions (§566.010)

As used in Chapter 566, the following terms have the meaning indicated. The definition of certain terms (even similar/identical terms) may differ between chapters (for example, compare the definitions of "sexual contact" in §566.010(6) and §567.010(5)).

Consent – consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

- (a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or
- (b) It is given by a person who by reason of youth, mental disease or defect, or intoxication, a drug-induced state, or any other reason, is manifestly unable to (or is known by the actor to be unable to) make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- (c) It is induced by force, duress or deception.

Deviate sexual intercourse means any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the penis, female genitalia, or the anus by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim.

Forcible compulsion-means either:

1. physical force that overcomes reasonable resistance; OR
2. a threat, express or implied, that places a person in reasonable fear of death, serious physical injury, or kidnapping of such person or another person (Code definition).

Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

Incapacitated – a temporary or permanent physical or mental condition in which a person is unconscious, unable to appraise the nature of his or her conduct, or unable to communicate unwillingness to an act. (Incapacitation must have

occurred before (not after) the act committed on the person for them to be considered incapacitated under the law.)

Sexual conduct means sexual intercourse, deviate sexual intercourse, or sexual contact.

Sexual contact means any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or any such touching through the clothing, or causing semen, seminal fluid, or other ejaculate to come into contact with another person, for the purpose of arousing or gratifying sexual desire of any person or for the purpose of terrorizing the victim.

Sexual intercourse means any penetration, however slight, of the female genitalia by the penis.

6.2 Rape in the First Degree (§566.030) & Sodomy in the First Degree (§566.060)

Life, or a term of years not less than 5 years

Rape in the First Degree

Elements:

A person commits the offense of rape in the first degree if:

1. (s)he has **sexual intercourse** with another person

- a. by using **forcible compulsion**; or
- b. who is incapacitated, incapable of consent, or lacks the capacity to consent.

Sodomy in the First Degree

Elements:

A person commits the offense of sodomy in the first degree if:

1. (s)he has **deviate sexual intercourse** with another person.

- a. by using forcible compulsion; or
- b. who is incapacitated, incapable of consent, or lacks the capacity to consent.

Penalty:

Rape in the first degree, attempted rape in the first degree, sodomy in the first degree and attempted sodomy in the first degree are felonies punishable by life in prison or a term of years not less than 5 years.

6.3 Rape in the Second Degree (§566.031)
Class D Felony

Elements:

A person commits the offense of rape in the second degree if (s)he:

1. has sexual intercourse with another person
2. knowing that (s)he does so without that person's consent.

6.4 Sodomy in the Second Degree (§566.061)
Class D Felony

Elements:

A person commits the offense of sodomy in the second degree if (s)he:

1. has deviate sexual intercourse with another person
2. knowing that (s)he does so without that person's consent.

6.5 Statutory Rape in the First Degree (§566.032)
Penalty Varies (See Below)

Elements:

A person commits the offense of statutory rape in the first degree if (s)he:

1. has sexual intercourse with another person
2. who is less than fourteen years old.

Penalty:

Statutory rape in the first degree or an attempt to commit statutory rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless the offense is an aggravated sexual offense, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

6.6 Statutory Rape in the Second Degree (§566.034)
Class D Felony

Elements:

A person commits the offense of statutory rape in the second degree if:

1. being twenty-one years of age or older
2. (s)he has sexual intercourse with another person
3. who is less than seventeen years of age.

6.7 Statutory Sodomy in the First Degree (§566.062)
Penalty Varies (See Below)

Elements:

A person commits the offense of statutory sodomy in the first degree if (s)he:

1. has deviate sexual intercourse with another person
2. who is less than fourteen years old.

Penalty:

Statutory sodomy in the first degree or attempt to commit statutory sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless the offense is an aggravated sexual offense, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

6.8 Statutory Sodomy in the Second Degree (§566.064)
Class D Felony

Elements:

A person commits the offense of statutory sodomy in the second degree if:

1. being twenty-one years of age or older,
2. (s)he has deviate sexual intercourse with another person
3. who is less than seventeen years of age.

Comments:

Rape or sodomy or an attempt to commit rape or sodomy by using forcible compulsion is a felony for which the authorized term of imprisonment, including both prison and conditional terms, is life imprisonment or a term of years not less than five years, unless the offense is an aggravated sexual offense, in which case the authorized term of imprisonment is not less than 10 years to life imprisonment.

Note that prior to August 29, 1990, no person could be convicted of rape, sodomy, or sexual assault first degree unless at the time of the offense the defendant was not married to the victim. For any incidents occurring prior to that date, marriage remains a defense.

Examples:

1. Donald forces Mary to have sexual intercourse with him. She resisted to a reasonable degree, but was unable to overcome Donald's superior physical strength. Donald is guilty of rape in the first degree punishable as a felony carrying five years to life because Donald used forcible compulsion.
2. Same facts as (1) except Donald threatened Mary with a knife to compel her to submit to him. Donald is guilty of rape in the first degree punishable from 15 years to life imprisonment since he used a dangerous instrument making it an aggravated sexual offense.
3. Dorothy, 30, has intercourse with Bill, 13. Dorothy is guilty of statutory rape in the first degree. Bill's willingness to participate is irrelevant, as would be Dorothy's belief that Bill is 14 or older.
4. Donald forces Mary to have deviate sexual intercourse with him. In the process, he seriously injures her. Donald has committed sodomy in the first degree. The offense is punishable from 10 years to life imprisonment since Donald caused serious physical injury in the course of the offense.
5. Donald has deviate sexual intercourse with Bill. Donald is unaware of Bill's age. Donald has committed statutory sodomy in the first degree because Bill is under 14. His lack of knowledge of Bill's age is not a defense. The offense is punishable from 5 years to life imprisonment.

Cross Reference:

Serious physical injury
Deadly weapon
Infancy as a defense

6.9 Sexual Abuse in the First Degree (§566.100)
Penalty Varies (See Below)

Elements:

A person commits the offense of sexual abuse in the first degree if (s)he:

1. subjects another person to sexual contact
2. by the use of forcible compulsion, or
3. when that person is incapacitated, incapable of consent, or lacks the capacity to consent.

Penalty:

Sexual abuse in the first degree is a class C felony, unless the offense is an aggravated sexual offense, or the victim is less than fourteen years of age, in which case it is a class B felony.

6.10 Sexual Abuse in the Second Degree (§566.101)
Penalty Varies (See Below)

Elements:

A person commits the offense of sexual abuse in the second degree if:

1. (s)he purposely subjects another person to sexual contact without that person's consent.

Penalty:

Sexual abuse in the second degree is a class A misdemeanor unless it is an aggravated sexual offense, in which case it is a class E felony.

Examples:

1. David, while riding on a bus reaches over and begins to rub the knee of a woman he has never seen before. She slaps him. David has not committed sexual abuse second degree since rubbing another's knee does not fall within the definition of sexual contact. However, he may have committed fourth degree assault since it is an offensive touching.
2. David and Mary, both 17, are out on a date. David repeatedly attempts to fondle Mary's breasts, but Mary resists. Finally, David reaches over and grabs one of Mary's breasts. Mary responds by slapping him. David has committed sexual abuse in the second degree.

**6.11 Sexual Misconduct Involving a Child (§566.083)
Penalty Varies (See Below)****Elements:**

A person commits the offense of sexual misconduct involving a child if the person:

1. Knowingly exposes his or her genitals to a child less than fifteen years of age under circumstances in which (s)he knows that his or her conduct is likely to cause affront or alarm to the child;
2. knowingly exposes his or her genitals to a child less than fifteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; OR
3. knowingly, coerces or induces a child less than fifteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.
4. knowingly coerces or induces a child known by the actor to be less than fifteen years of age to expose the breasts of a female child through the internet or other electronic means for the purpose of arousing the sexual desire of any person, including the child.

Penalty:

Sexual misconduct involving a child is a class E felony unless the actor has previously pleaded guilty to or been convicted of a sexual offense, in which case it is a class D felony.

Note: The elements of this offense are applicable regardless of whether the defendant commits it in person or via the internet or other electronic means. It is not a defense if the victim was a law enforcement officer masquerading as a minor.

6.12 Child Molestation Offenses**Introduction:**

Under the Revised Criminal Code, the child molestation offenses have been restructured, with two additional degrees of child molestation being added. Furthermore, these provisions incorporate a so-called “Romeo and Juliet” window so young adults, who may still be teenagers themselves, will not face potential prosecution for engaging in consensual sexual conduct with other teenagers.

6.12A Child Molestation in the First Degree (§566.067)
Penalty Varies (See Below)**Elements:**

A person commits the offense of child molestation in the first degree if (s)he:

1. subjects another person who is less than fourteen years of age
2. to sexual contact **and**
3. it is an aggravated sexual offense.

Penalty:

Child molestation in the first degree is a **class A felony; OR** if the victim is a child less than 12 years of age, the term of imprisonment will be served without probation, parole, or conditional release.

6.12B Child Molestation in the Second Degree (§566.068)
Class B Felony**Elements:**

A person commits the offense of child molestation in the second degree if (s)he:

1. subjects a child who is less than 12 years of age to sexual contact; or
2. being more than 4 years older than a child who is less than 17 years of age, subjects the child to sexual contact **and**
3. it's an aggravated sexual offense.

6.12C Child Molestation in the Third Degree (566.069)
Penalty Varies (See Below)

Elements:

1. A person commits the offense of child molestation in the third degree if (s)he subjects a child who is less than 14 years of age to sexual contact.

Penalty:

Child molestation in the third degree is a **class C felony**; it becomes a **class B felony if forcible compulsion was used**.

**6.12D Child Molestation in the Fourth Degree (566.071)
Class E Felony****Elements:**

A person commits the offense of child molestation in the fourth degree if (s)he:

1. being more than 4 years older than a child
2. who is less than 17 years of age,
3. subjects the child to sexual contact.

Penalty:

Child molestation in the fourth degree is a **class E felony**.

6.12E Chart

The chart that follows is intended as a quick reference aid in deciding what Statutory Rape, Statutory Sodomy or Child Molestation offense has been committed based on age and conduct. It does not include all sexual offenses.

DEFENDANT'S AGE	VICTIM'S AGE	CONDUCT	AGGRAVATION		OFFENSE
Any	Less than 14	Sexual Intercourse			Statutory Rape 1 st
21 or Older	14 – 16	Sexual Intercourse			Statutory Rape 2 nd
Any	Less than 14	Deviate Sexual Intercourse			Statutory Sodomy 1 st
21 or Older	14 – 16	Deviate Sexual Intercourse			Statutory Sodomy 2 nd
Any	Less than 14	Sexual Contact	And	Aggravated Sexual Offense	Child Molestation 1 st
Any	Less than 12	Sexual Contact	And	Aggravated Sexual Offense	Child Molestation 2 nd
More than 4 years older	Less than 17	Sexual Contact	And	Aggravated Sexual Offense	Child Molestation 2 nd
Any	Less than 14	Sexual Contact			Child Molestation 3 rd
More than 4 years older	Less than 17	Sexual Contact			Child Molestation 4 th

6.13 Enticement of a Child (§566.151)
Penalty Varies (See Below)

Elements:

A person commits the offense of enticement of a child if:

1. Being twenty-one years of age or older (s)he;
2. Persuades, solicits, coaxes, entices or lures whether by words, actions or through communication via the Internet or any electronic communication;
3. any person who is less than fifteen years of age for the purpose of engaging in sexual conduct with a child.

Penalty:

Enticement of a child or an attempt to commit enticement of a child is a felony punishable by a minimum 5 years up to 30 years imprisonment. No person convicted of this offense shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of 5 calendar years.

It is not a defense to this offense if the “victim” was a peace officer masquerading as a minor.

6.14 Age Misrepresentation with Intent to Solicit a Minor (§566.153)
Class E Felony

Elements:

A person commits the offense of age misrepresentation with intent to solicit a minor when (s)he:

1. knowingly misrepresents his or her age
2. with the intent to use the Internet to engage in criminal sexual conduct involving a minor.

“Marriage to the Victim is an Affirmative Defense to Statutory Rape, Statutory Sodomy, and Child Molestation in the Fourth Degree” (§566.023)

It shall be an affirmative defense to prosecutions under §§566.032, 566.034, 566.062, 566.064, and 566.071 that the defendant was married to the victim at the time of the offense.

6.15 Sexual Misconduct in the First Degree (§566.093)
Penalty Varies (See Below)

Elements:

A person commits the offense of sexual misconduct in the first degree if (s)he:

1. exposes his/her genitals under circumstances in which (s)he knows that his/her conduct is likely to cause affront or alarm; OR
2. has sexual contact in the presence of a third person or persons under circumstances in which (s)he knows that such conduct is likely to cause affront or alarm; OR
3. has sexual intercourse or deviate sexual intercourse in a public place in the presence of a third person.

Penalty:

Sexual misconduct in the first degree is a class B misdemeanor unless the actor has previously been convicted of an offense under Chapter 566, in which case it is a class A misdemeanor.

6.16 Sexual Misconduct in the Second Degree (§566.095)
Class C Misdemeanor

Elements:

A person commits the offense of sexual misconduct in the second degree if (s)he:

1. solicits or requests another person to engage in sexual conduct
2. under circumstances in which (s)he knows that his/her requests or solicitation is likely to cause affront or alarm.

6.17 Sexual Contact with a Student (§566.086)
Class E Felony

Elements:

A person commits sexual contact with a student if (s)he:

1. has sexual contact with a student of the school and
2. at the time, the person is:
 - a. a teacher;
 - b. a student teacher;
 - c. an employee of the school;
 - d. a volunteer of the school;

- e. a volunteer for an organization working with the school on a project or program;
- f. an elected or appointed official of the public school district;
- g. a person employed by an entity that contracts with the school or the public school district to provide services; or
- h. a coach, assistant coach, director, or other adult with a school-aged team, club, or ensemble, regardless of whether such team, club, or ensemble is connected to a school or scholastic association.

Definitions:

"School" means any public or private school in this state serving kindergarten through grade twelve or any school bus used by the school district.

"School-aged team, club, or ensemble" means any group organized for individual or group competition for the performance of sports activities or any group organized for individual or group presentation for fine or performing arts, by any child under eighteen years of age.

6.18 Sexual conduct with a nursing facility resident or a vulnerable person, 1st degree (§566.115)

Penalty Varies (See Below)

Elements:

This offense is committed if:

- 1. Any owner or employee of a skilled nursing facility or an Alzheimer's special unit or program OR being a vendor, provider, agent, or employee of a certified program of the department of mental health;
- 2. Has sexual intercourse or deviate sexual intercourse with a resident or vulnerable person.

Penalty:

The first offense is a class A misdemeanor; any subsequent violation of this section is a class E felony.

Note: Consent of the victim is not a defense. This section does not apply to any person who is married to the resident or vulnerable person.

6.19 Sexual conduct with a nursing facility resident or a vulnerable person, 2nd degree (§566.116)

Penalty Varies (See Below)

Elements:

This offense is committed if:

1. Any owner or employee of a skilled nursing facility or an Alzheimer's special unit or program OR being a vendor, provider, agent, or employee of a certified program of the department of mental health;
2. Has sexual contact with a resident or vulnerable person.

Penalty:

First offense is a class B misdemeanor; any subsequent violation of this section is a class A misdemeanor.

Comment:

Consent of the victim is not a defense. This section does not apply to any person who is married to the resident or vulnerable person.

6.20 Sex with an Animal (§566.111)

Penalty Varies (See Below)

Elements:

A person commits the offense of unlawful sex with an animal if (s)he:

1. engages in sexual conduct with an animal.

Penalty:

This offense is a class A misdemeanor unless the defendant has previously convicted under this section, in which case the offense is a class E felony.

Definition:

"animal:" every creature, either alive or dead, other than a human being.

"sexual conduct with an animal:" any touching of an animal with the genitals or any touching of the genitals or anus of an animal for the purpose of arousing or gratifying the person's sexual desire.

6.21 Sexual Conduct in the Course of Public Duty (§566.145)

Class E Felony

Elements:

A person commits this offense if (s)he: is an employee of, or assigned to work in, any jail, prison or correctional facility and engages in sexual conduct with a detainee, prisoner, or offender who is confined in a jail, prison, or correctional facility;

1. is a probation or parole officer and engages in sexual conduct with an offender who is under the direct supervision of the officer; is a law enforcement officer and engages in sexual conduct with a detainee or prisoner who is in the custody of such officer;
2. is a probation and parole officer, a police officer, or an employee of, or assigned to work in, any jail, prison, or correctional facility, and, while on-duty, engages in sexual conduct with someone who is not a detainee, a prisoner, or an offender by means of coercion as defined in 566.200.

The term "detainee" is defined as a person deprived of liberty and kept under involuntary restraint, confinement, or custody. "Prisoner" includes any person who is in the custody of a jail, whether pretrial or after disposition of a charge. "Offender" includes any person in the custody of a person or correctional facility and any person who is under the supervision of the division of probation and parole.

Consent of the person with whom the public employee engaged in sexual contact is **not a defense**.

6.22 Evidence of other offenses (§566.025)

In prosecutions of a sexual nature under Chapter 566 or Chapter 568 involving a victim under fourteen years of age, whether or not age is an element of the offense for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged offenses of a sexual nature involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the offense or offenses with which (s)he is

currently charged, unless the trial court finds that the probative value of such evidence is outweighed by the prejudicial effect.

Note: (2007) Section still violates state constitutional provisions; evidence of prior criminal acts is never admissible for purpose of demonstrating defendant's propensity to commit the crime presently charged. State v. Ellison, 239 S.W.3d 603 (Mo. banc).

In 2014, the Missouri Constitution was amended to include a provision that states, "(I)n prosecutions for crimes of a sexual nature involving a victim under eighteen years of age, relevant evidence of prior criminal acts, whether charged or uncharged, is admissible for the purpose of corroborating the victim's testimony or demonstrating the defendant's propensity to commit the offense with which (s)he is presently charged. The court may exclude relevant evidence of prior criminal acts if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

6.23 Exposing Another Person to a Serious Infectious or Communicable Disease (§191.677)

Penalty Varies (See Below)

Elements:

It shall be unlawful for any individual knowingly infected with a serious infectious or communicable disease to:

1. Be or attempt to be a blood, blood products, organ, sperm, or tissue donor except as deemed necessary for medical research or as deemed medically appropriate by a licensed physician; OR
2. Knowingly expose another person to such disease through an activity that creates a substantial risk of disease transmission as determined by competent medical or epidemiological evidence; OR

Act in a reckless manner by exposing another person to such disease through an activity that creates a substantial risk of disease transmission as determined by competent medical or epidemiological evidence.

It is an affirmative defense to a charge under this section if the person exposed to the serious infectious or communicable disease knew that the infected person was infected with the serious infectious or communicable disease at the time of the exposure and consented to the exposure with such knowledge.

A "serious infectious or communicable disease" is a nonairborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management.

Penalty:

Violation of the provisions of subsection 1 or 2 above is a class D felony, unless the victim contracts a serious infectious or communicable disease from the contact in which case it is a class C felony. Violation of subsection 3 is a Class A misdemeanor.

**6.24 Residing within 1000 feet of a School or Child-Care Facility
(§566.147)**

Penalty Varies (See Below)

Elements:

1. Any defendant who has been found guilty of:
 - a. A sexual offense within Chapter 566; OR
 - b. Incest; OR
 - c. Endangering the welfare of a child in the first degree; OR
 - d. Use of a child in a sexual performance; OR
 - e. Promoting a sexual performance by a child; OR
 - f. Sexual exploitation of a minor; OR
 - g. Promoting child pornography; OR
 - h. Possession of child pornography; OR
 - i. Furnishing pornography to a minor;
2. Shall not reside within one thousand feet of any public or private school giving instruction in a grade or grades not higher than the twelfth grade, or child-care facility which is in existence at the time the individual begins to reside at the location. Such person shall also not reside within one thousand feet of the property line of the residence of a former victim of such person.
3. If the offender has already established a residence and a public school, a private school, or a child-care facility is subsequently built or placed within one thousand feet of such person's residence, or a former victim subsequently resides on property with a property line within one thousand feet of such person's residence, then such person shall, within one week of the opening of such public school, private school, or child-care facility, or the former victim residing on the property, notify the county sheriff where such public school, private school, child-care facility or property line of the residence or a former victim is located that (s)he is now residing within one thousand feet of such public school, private school, child-care facility, or property line of the residence of a former victim, and shall provide verifiable proof to the sheriff that (s)he resided there prior to the opening of such public school, private school, or child-care facility, of the former victim residing on the property.

Note: “Resides” means sleeps in a residence, which may include more than one location and may be mobile or transitory but shall not include transitory or longer-term presence in facilities licensed under Chapter 197 (medical treatment facilities) or Chapter 198 (nursing homes) for purposes of receiving care, treatment or services from such licensed facility.

For the purposes of the section, one thousand feet shall be measured from the edge of the offender's property nearest the public school, private school, child care facility, or former victim to the nearest edge of the public school, private school, child care facility, or former victim's property.

Penalty:

Violation of the provisions of paragraph 2 is a class E felony except that the second or any subsequent violation is a class B felony. Violation of the provisions of paragraph 3 is a class A misdemeanor except that the second or subsequent violation is a class E felony.

**6.25 Presence in or Loitering within 500 feet of a Child Care Facility
(\$566.148)**
Class A Misdemeanor

Elements:

1. Any defendant who has been found guilty of:
 - a. A sexual offense within Chapter 566; OR
 - b. Incest; OR
 - c. Endangering the welfare of a child in the first degree; OR
 - d. Use of a child in a sexual performance; OR
 - e. Promoting a sexual performance by a child; OR
 - f. Sexual exploitation of a minor; OR
 - g. Promoting child pornography; OR
 - h. Possession of child pornography; OR
 - i. Furnishing pornography to a minor;
2. Shall not knowingly be physically present in or loitering within 500 feet of or to approach, contact, or communicate with any child under eighteen years of age in any child care facility building, or on real property comprising any child care facility when persons under the age of eighteen are present in the building, on the grounds, or in the conveyance,
3. Unless the offender is a parent, legal guardian, or custodian of a student present in the building or on the grounds.

6.26 Presence in or Loitering within 500 feet of a School (§566.149)
Class A Misdemeanor

Elements:

1. Any defendant who has been found guilty of:
 - a. A sexual offense within Chapter 566; OR
 - b. Incest; OR
 - c. Endangering the welfare of a child in the first degree; OR
 - d. Use of a child in a sexual performance; OR
 - e. Promoting a sexual performance by a child; OR
 - f. Sexual exploitation of a minor; OR
 - g. Possession of child pornography; OR
 - h. Promoting child pornography; OR
 - i. Furnishing pornography to a minor;
2. Shall not be present in or loitering within 500 feet of any school building, or on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present in the building, on the grounds, or in the conveyance,
3. Unless the offender is a parent, legal guardian, or custodian of a student present in the building and has permission from the superintendent, school board, or in the case of a private school, the principal.

Note: For this section only, an offender is guilty regardless of their knowledge of his or her proximity to school property or a school-related activity.

**6.27 Presence in or Loitering within 500 feet of a Public Park,
Swimming Pool, or Museum (§566.150)**
Penalty Varies (See Below)

Elements:

1. Any defendant who has been found guilty of:
 - a. A sexual offense within Chapter 566; OR
 - b. Incest; OR
 - c. Endangering the welfare of a child in the first degree; OR
 - d. Use of a child in a sexual performance; OR
 - e. Promoting a sexual performance by a child; OR
 - f. Sexual exploitation of a minor; OR
 - g. Possession of child pornography; OR
 - h. Promoting child pornography; OR
 - i. Furnishing pornography to a minor;

2. Shall not knowingly be physically present in or loitering within 500 feet of any real property comprising any public park with playground equipment, a public swimming pool, an athletic complex or athletic field existing primarily for child recreation, any museum if such museum holds itself out to the public as and exists with the primary purpose of entertaining or educating children under eighteen years of age, or Missouri Department of Conservation nature or education center properties.

Penalty:

Violation of this section is a class E felony. A subsequent violation of this section shall be a class D felony.

6.28 Serving as Coaches, Managers, or Trainers (§566.155)

Penalty Varies (See Below)

Elements:

1. Any defendant who has been found guilty of:
 - a. A sexual offense within Chapter 566; OR
 - b. Incest; OR
 - c. Endangering the welfare of a child in the first degree; OR
 - d. Use of a child in a sexual performance; OR
 - e. Promoting a sexual performance by a child; OR
 - f. Sexual exploitation of a minor; OR
 - g. Possession of child pornography; OR
 - h. Promoting child pornography; OR
 - i. Furnishing pornography to a minor;
2. Shall not serve as an athletic coach, manager, or athletic trainer for any sports team in which a child less than seventeen years of age is a member.

Penalty:

Violation of this section is a class E felony. A subsequent violation of this section shall be a class D felony.

6.29 Trafficking for the Purposes of Sexual Exploitation (§566.209)

Penalty Varies (See Below)

Elements:

A person commits the offense of trafficking for the purposes of sexual exploitation if (s)he:

1. knowingly recruits, entices, harbors, transports, provides, or obtains by any means
2. another person for the use or employment of such person in a commercial sex act, sexual conduct, a sexual performance, or the production of explicit sexual material;
3. a. without that person's consent, OR
b. benefits financially or receives anything of value from participation in such activities.

Penalty:

A felony punishable by imprisonment for a term of years not less than five and not more than twenty and a fine not to exceed \$250,000.00. If this offense was committed by force, abduction, or coercion, it is punishable for a term of years not less than ten years up to life and a fine not to exceed \$250,000.00.

6.30 Sexual Trafficking of a Child in the First Degree (§566.210)
Penalty Varies (See Below)**Elements:**

A person commits the offense of sexual trafficking of a child if (s)he:

1. a. knowingly recruits, entices, harbors, transports, provides, or obtains by any means;
b. another person under the age of twelve for the use or employment of such person in sexual conduct or a sexual performance or the production of explicit sexual material;
c. benefits financially or by receiving anything of value for participation in such activities; OR
2. a. causes a person under the age of twelve;
b. to engage in a commercial sex act, a sexual performance, or the production of explicit sexual material as defined in §573.010.

Penalty:

A felony punishable by imprisonment for a term of life without the possibility of probation or parole until the defendant has served at least twenty-five years of such sentence.

Note: It is not a defense that the defendant believed that the person was twelve years of age or older.

When a child is located by a peace officer and there is reasonable cause to suspect the child may be a victim of sex trafficking or severe forms of

trafficking as those terms are defined under 22 U.S.C. Section 7102, the peace officer shall immediately cause a report to be made to the children's division in accordance with section 210.115 (mandated reporter statute) (§210.1500).

6.31 Sexual Trafficking of a Child in the Second Degree (§566.211)
Penalty Varies (See Below)

Elements:

A person commits the offense of sexual trafficking of a child in the second degree if (s)he:

1. a. knowingly recruits, entices, harbors, transports, provides, or obtains by any means;
- b. another person under the age of eighteen for the use or employment of such person in sexual conduct or a sexual performance or the production of explicit sexual material (as defined in §573.010)
- c. benefits financially or by receiving anything of value for participation in such activities; OR
2. a. causes a person under the age of eighteen;
- b. to engage in a commercial sex act, a sexual performance, or the production of explicit sexual material as defined in §573.010.

Penalty:

A felony punishable by imprisonment for a term of years not less than ten or life and a fine not to exceed \$250,000.00. If this offense was committed by force, abduction, or coercion, it is punishable for life without the possibility of probation or parole until the defendant has served not less than twenty-five years.

Note: It is not a defense that the defendant believed that the person was eighteen years of age or older.

When a child is located by a peace officer and there is reasonable cause to suspect the child may be a victim of sex trafficking or severe forms of trafficking as those terms are defined under 22 U.S.C. Section 7102, the peace officer shall immediately cause a report to be made to the children's division in accordance with section 210.115 (mandated reporter statute) (§210.1500).

Chapter 7 **Drug Offenses**

7.1 Introduction

The criminal drug offenses are found in Chapter 579. The regulatory offenses pertaining to controlled substances are in Chapter 195.

Repeat Drug Offenders:

The sentencing enhancements for “prior” and “persistent” drug offenders are been incorporated in a general repeat offender statute in Chapter 579 (see §579.170).

Any person found to be a prior drug offender (one felony drug offense) and found guilty of a class C, D, or E felony drug offense shall be sentenced to the authorized term of imprisonment for an offense **one class higher** than the offense for which the person was found guilty. Likewise, any person found to be a persistent drug offender (two or more felony drug offenses) and found guilty of a class C, D, or E felony drug offense shall be sentenced to the authorized term of imprisonment for an offense **two classes higher** than the offense for which the person was found guilty. Persistent drug offenders found guilty of a class B felony drug offense shall be sentenced to the authorized term of imprisonment for a **class A felony** offense.

Each of the controlled substances comes under one of the five schedules (§195.017): (See Note Following)

1. Schedule 1 Drugs--high potential for abuse and no accepted medical use or lacks accepted safety for use in treatment under medical supervision;
2. Schedule 2 Drugs--high potential for abuse but has a currently accepted medical use (Opium is an example);
3. Schedule 3 Drugs--a less potential for abuse but has a currently accepted medical use and abuse may lead to moderate or low physical dependence, or high psychological dependence (amphetamines are an example);

4. Schedule 4 Drugs--low potential for abuse--may lead to limited physical or psychological dependence (diazepam or certain concentrations of codeine are examples); AND
5. Schedule 5 Drugs--Similar to Schedule 4, but specifically includes preparations containing limited quantities of certain narcotic drugs.

NOTE: Chapter 195.022 provides that a controlled substance analogue, shall, to the extent intended for human consumption, be treated, for the purposes of any state law, as a controlled substance in schedule I. An analogue is a chemical substance that is structurally similar to another substance. For example, there are analogues of methamphetamine that, while technically speaking are not methamphetamine, are chemically similar and have the similar effects upon the body as methamphetamine.

Actual possession: if a person has the substance on his/her person or within easy reach and convenient control.

Constructive possession: although not in actual possession, a person has the power and the intention at a given time to exercise dominion or control over the substance either directly or through another person or persons.

7.1A Alcohol and Drug Abuse Commitments (Chapter 631)

To be under the influence of alcohol and drugs alone is not an offense. However, police officers are often faced with persons who because they are major drug or alcohol abusers present a likelihood of serious physical harm to themselves or other persons.

This law authorizes peace officers to take a person into custody and transport him/her to an alcohol or drug abuse facility if the officer has reasonable cause to believe serious physical harm is **imminent** to that person or other persons as a result of the abuser's drug or alcohol use. Once at the treatment facility the officer will be required to fill out an application for detention indicating what facts gave rise to his/her reasonable belief that the person was in need of immediate treatment. The filing of this document then gives the treatment facility the right to hold the patient for up to 96 hours without a court order. If the treatment facility wishes to hold the person for more than 96 hours, they must petition the Probate Court for such an order and the peace officer may be subpoenaed to testify at that hearing. The Probate Court may require the person to stay in the facility for periods of up to one year.

7.2 Drug Offenses Transferred

The following drug-related offenses are found in Chapter 579:

1. §579.015 Possession of a controlled substance
2. §579.020 Delivery of a controlled substance
3. §579.030 Distribution of a controlled substance in a protected location
4. §579.040 Distribution, delivery, or sale of drug paraphernalia
5. §579.045 Fraudulently attempting to obtain a controlled substance
6. §579.050 Manufacture of imitation controlled substance
7. §579.055 Manufacture of controlled substance
8. §579.060 Unlawful sale or distribution of over-the-counter methamphetamine precursor drugs
9. §579.065 Trafficking drugs in the first degree
10. §579.068 Trafficking drugs in the second degree
11. §579.070 Creating a danger
12. §579.072 Furnishing materials for production of controlled substance
13. §579.074 Unlawful possession of drug paraphernalia
14. §579.076 Unlawful manufacture of drug paraphernalia
15. §579.078 Possession of imitation controlled substance
16. §579.080 Delivery of imitation controlled substance
17. §579.082 Unlawful marketing of ephedrine or pseudoephedrine
18. §579.084 Distribution of controlled substance in violation of registration requirements
19. §579.086 Unlawful delivery of controlled substance by manufacturer or distributor
20. §579.090 Tampering with prescription or prescription drug order
21. §579.095 Possession of anhydrous ammonia in non-approved container
22. §579.097 Inhalation or inducing others to inhale solvent fumes to cause certain reactions
23. §579.099 Inducing, or possession with intent to induce, symptoms by use of certain solvents and other substances
24. §579.101 Possession or purchase of solvents to aid others in violations
25. §579.103 Selling or transferring solvents to cause certain symptoms
26. §579.105 Keeping or maintain a public nuisance
27. §579.110 Possession of methamphetamine precursors
28. §579.115 Failure to report suspicious transactions
29. §579.150 Distribution of prescription medication on school property
30. §579.155 Possession of prescription medication on school property

7.3 Forfeiture of Property Used in Controlled or Imitation Controlled Substance or Drug Paraphernalia Transactions (§195.140)

Comments:

Everything of value which is furnished or intended to be furnished in exchange for a controlled substance, imitation controlled substance, or drug paraphernalia in violation of the preceding section or other drug violations in Chapter 195 or Chapter 579 shall be forfeited. Forfeitable items include money, negotiable instruments, securities, and any other items that can be shown to constitute exchanged value.

In addition, all money found in close proximity to controlled substances, imitation controlled substances, or drug paraphernalia is presumed forfeitable. Records of illicit importation, manufacture, or distribution of such items are also forfeitable.

A person's property shall not be forfeited if (s)he can establish that the illicit activity was committed without his/her knowledge or consent.

Examples:

Damien offers to sell some drugs to Craig. Craig agrees to buy some Quaaludes, and a powdery substance with Damien calls Angel Dust, in exchange for his watch and \$40.00. They had been under police surveillance and were immediately confronted by the officers. It turns out that the powder was not true PCP. Craig's watch will be forfeited since it had value and was furnished in exchange for a controlled substance. The \$40.00 given as value in exchange for the imitation controlled substance will be forfeited.

7.4 A Public Nuisance/Drug House (§195.253 and §579.105)

The Attorney General, Circuit Attorney, or Prosecuting Attorney may file a lawsuit to enjoin a public nuisance involving controlled substances if they can show:

1. a room, building, structure, or inhabitable structure as defined in §556.061; AND
2. use of the room, building, structure, or inhabitable structure for the illegal
 - a. use; OR
 - b. possession; OR
 - c. sale of controlled substances.

If the court finds that the owner of the room, building, structure, or inhabitable structure knew of the illegal activities the court may order that the place cannot be occupied or used by anyone for up to one year.

7.5 Keeping Or Maintaining A Public Nuisance As An Offense**(§579.105)****Class E Felony**

A person commits the offense of keeping or maintaining a public nuisance if (s)he knowingly keep or maintains any room, building, structure, or inhabitable structure:

1. used for the illegal use, keeping, or selling of controlled substances; OR
2. where on three or more separate occasions within one year two or more non-residents gathered to unlawfully ingest, inject, inhale use any amount of a controlled substance

Exception: this does not include the 35 grams or less of marijuana or synthetic cannabinoid.

7.6 Search Warrant and Controlled Substance Seizures**(Chapter 195 and Chapter 542)**

Search warrants are obtainable for the search and seizure of controlled substances, imitation controlled substances, or for any drug paraphernalia. The prosecuting attorney or his/her designated assistant must sign the application for the search warrant. If they do not sign the search warrant request the search warrant will be invalid (§542.276). This applies to all search warrants, not just those for controlled substances. For general information on search warrants see Chapter 542.

7.7 Fraudulently Attempting to Obtain a Controlled Substance**(§579.045)****Class E Felony****Elements:**

A person commits the offense of fraudulently attempting to obtain a controlled substance if (s)he:

1. knowingly
 - a. obtains or attempts to obtain a controlled substance by
 - b. fraud, deceit, misrepresentation, or subterfuge; OR

2. knowingly
 - a. procures or attempts to procure the administration of a controlled substance by
 - b. fraud, deceit, misrepresentation, or subterfuge; OR
3. knowingly
 - a. obtains or attempts to obtain a controlled substance by
 - b. forgery or alteration of a prescription or of any written order; OR
4. knowingly
 - a. obtains or attempts to obtain a controlled substance by
 - b. concealment of a material fact; OR
 - c. the use of a false name; OR
 - d. by giving a false address.

Comments:

The following criminal acts are examples of the type of activity which is forbidden under §579.045:

1. knowingly making a false statement in any prescription, order, report, or record required by Chapter 195 or Chapter 579;
2. for the purpose of obtaining a controlled substance, falsely assuming the title of, or representing oneself to be a manufacturer, wholesaler, apothecary, physician, dentist, podiatrist, veterinarian, or other authorized person;
3. making or uttering any false or forged prescription or false or forged written order;
4. affixing any false or forged label to a package or receptacle containing controlled substances; OR
5. possessing a false or forged prescription with the intent to obtain a controlled substance.

In general, the physician-client privilege will not apply in these cases unless information was obtained from the defendant/patient to allow the doctor to prescribe the proper medicine or act as a surgeon. This law also applies to attempts to obtain narcotic drugs as provided in §195.080.

**7.8 Tampering with a Prescription or Prescription Drug (§579.090)
Class A Felony****Elements:**

Any licensed pharmacist commits the offense of tampering with a prescription or a prescription drug order if such person knowingly:

1. Causes the intentional adulteration of the concentration or chemical structure of a prescribed drug or drug therapy without the knowledge and consent of the prescribing practitioner; OR
2. Misrepresents a misbranded, altered, or diluted prescription drug or drug therapy with the purpose of misleading the recipient or the administering person of the prescription drug or drug therapy; OR
3. Sells a misbranded, altered, or diluted prescription drug therapy with the intention of misleading the purchaser.

**7.9 Possession of Controlled Substances (§579.015)
Penalty Varies (See Below)****Elements:**

A person commits the offense of possession of a controlled substance if (s)he:

1. knew of the presence of the substance; AND
2. knew of the illegal nature of the substance; AND
3. had actual or constructive possession of the substance; AND
4. the substance was a controlled substance.

Penalty:

The base penalty for possession of a controlled substance is a class D felony with the exception of thirty-five (35) grams or less of marijuana. If a person possesses more than ten (10) grams but thirty-five (35) grams or less of marijuana the penalty is a class A misdemeanor. If a person possesses not more than ten (10) grams of marijuana the penalty is a class D misdemeanor, unless they have previously been found guilty of any controlled substance laws, then the penalty is a class A misdemeanor. The term "marijuana" as used in this section includes marijuana or any synthetic cannabinoid.

Discussion:

This definition broadens the courts holding on the issue of possession in two

ways. First, a person can have actual possession of a controlled substance if (s)he has it in his/her hand, on his/her person or **within his/her easy reach and convenient control.** Second, a person who, although not in actual possession of the controlled substance is in constructive possession of it if you can prove the person has the power and intention to exercise dominion or control over the controlled substance either directly or through another person or persons.

Examples:

1. Officer Smith enters a room as part of a search warrant team. He sees three men around a kitchen table, all of whom stand still and make no admissions. A search finds a bag of cocaine in the kitchen drawer within easy reach and convenient control of one of the men who is an overnight guest in the house. While he is in "actual possession" of the drug, since it is within his reach, he is not guilty because there is no proof, he knew of the presence and illegal nature of the substance found in the kitchen.
2. Same facts as 1 except as officers enter the room the defendant ran over to the drawer and tried to dump the drugs down the sink. This act would be sufficient to show defendant knew of the presence and illegal nature of the substance found in the kitchen.
3. Mr. Jones tells Miss Brown to go to the local bank and rent a safe deposit box in her name. Mr. Jones takes the key from Miss Brown. Each month Mr. Jones gives Miss Brown directions on where to pick up a package, which she then takes to the bank. Mr. Jones gives her the key to the box and a small fee for her time. After Miss Brown leaves the bank, she returns the key to Mr. Jones. Mr. Jones warns Miss Brown not to discuss this matter with anyone as he might get in trouble. The packages contain cocaine. Mr. Jones is guilty of possession of a controlled substance. His statements to Miss Brown and method of renting and using the safe deposit box show he knew of the presence and illegality of the cocaine in the packages. Mr. Jones is in constructive possession of the packages because he exercised control over them through another person by directing their pick-up and by keeping the key to the safe deposit box.

7.9A Medical Marijuana

This text does not set out to list and discuss all of the intricacies of the Constitutional Amendment or related State Regulations. It is designed to merely provide a brief overview and references to the applicable regulations. If you should have any question about the applications of the amendment or regulations and enforcement of applicable criminal laws, you should seek the advice of your agency attorney or prosecuting attorney.

The passage of Article 14 of the Missouri Constitution allows patients with qualifying medical conditions to possess and use medical marijuana under the supervision of a licensed physician. Article 14 set protections for these patients from prosecution for medical use, but did not change civil and criminal laws governing nonmedical use of marijuana. Article 14 does not allow the use of marijuana in public, nor does it prohibit prosecution for offenses related to driving under the influence of marijuana. The article required the Missouri Department of Health and Senior Services (DHSS) to promulgate rules for regulation and control of the cultivation, manufacture, dispensing and sale of marijuana for medical use and for the enforcement of Article 14. The Missouri Department of Health and Senior Services did set those rules and they can be found in the Code of State Regulations in 19 CSR 30-95.

The Code of State Regulations defines the terms associated with medical marijuana. The Code also provides for the limitations to the amount(s) of medical marijuana. Generally, a patient or patient's caregiver may purchase and possess no more than four ounces of dried, unprocessed marijuana, or its equivalent, in a thirty-day period. If they do not cultivate their own plants, they may have up to a sixty-day supply. If they do cultivate, they may have up to a ninety-day supply. A patient may cultivate up to six flowering marijuana plants, six nonflowering marijuana plants and six clones at any one time in a single enclosed locked facility. They must hold a separate license from DHSS in order to cultivate plants. Purchase and possession limits may be increased on the recommendation of two independent physicians.

Patients and caregivers who apply for medical marijuana are issued a medical marijuana card to identify them as a qualifying patient. Cardholders who violate the provisions of 19 CSR § 30-95 may have their identification card revoked. If they are found to possess more than is allowed their card(s) will be revoked for up to one year. If a cardholder is convicted of, pleads guilty to, or receives a suspended imposition of sentence for violation of §579.020, §579.065 or §579.068, or for violation of a similar law of another state, their cards will be revoked. This revocation will be permanent unless they receive a pardon or expungement.

In order to help determine the amounts of marijuana one may purchase or possess in varying forms (including in concentrated or infused products) DHSS has developed and published the Missouri Marijuana Equivalency Units (MMEs). Qualifying patients are allowed to purchase up to four ounces (32 MMEs) of compliant products per month. One (1) MME is equal to 3.5 grams of marijuana. One (1) gram of marijuana concentrate also equals one (1) MME. One hundred (100) milligrams of THC infused product also equals one (1) MME.

7.10 Delivery of a Controlled Substance (§579.020)
Penalty Varies (See Below)

Elements:

A defendant commits the offense of delivery of a controlled substance (§579.020) if (s)he:

1. knowingly
 - a. distributes; OR
 - b. delivers a controlled substance; OR
2. attempts to
 - a. distribute; OR
 - b. deliver a controlled substance; OR
3. knowingly possesses with the intent to
 - a. distribute; OR
 - b. deliver a controlled substance; OR
4. knowingly permits a minor to
 - a. purchase; OR
 - b. transport an illegally obtained controlled substance

Penalty:

The base penalty for this section is a class C felony. If the controlled substance is thirty-five grams or less of marijuana or a synthetic cannabinoid the offense is a class E felony. The offense of delivery of thirty-five grams or less of marijuana or synthetic cannabinoid to a person less than seventeen years of age who is at least two years younger than the defendant is a class C felony. If the delivery or distribution is any amount of a controlled substance, with the exception of thirty-five grams or less of marijuana or synthetic cannabinoid, to a person less than seventeen years of age who is at least two years younger than the defendant; or the person knowingly permits a minor to purchase or transport illegally obtained controlled substances, then it is a class B felony.

Comments:

In applying this statute, you must clearly understand the definitions of several key words. These words are:

Distribute-to deliver other than by administering or dispensing a controlled substance (§195.010(12)).

Deliver or Delivery-the actual, constructive, or attempted transfer from one person to another person of drug paraphernalia or of a controlled substance or an imitation controlled substance, whether or not there is an agency relationship, and includes a sale (§195.010(8)).

Manufacture-the production, preparation, propagation, compounding, or processing of drug paraphernalia or of a controlled substance, or an imitation controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its container. This term does not include the preparation or compounding of a controlled substance or an imitation controlled substance by an individual for his/her own use or the preparation, compounding, packaging, or labeling of a narcotic or dangerous drug (§195.010(23)).

Production-includes the manufacture, planting, cultivation, growing, or harvesting of drug paraphernalia or of a controlled substance or of an imitation controlled substance (§195.010(36)).

Sale-includes barter, exchange or gift or offer therefore, and each such transaction made by any person, whether as a principal, agent, servant, or employee (§195.010(38)).

Examples:

1. Mr. Smith sells LSD to Ms. Brown for \$25.00. Mr. Smith tells Ms. Brown it is "good" stuff which will make her "fly." Mr. Smith is guilty of knowingly delivering a controlled substance.
2. Mr. Johns agrees to give Mr. Blythe an "eight ball" of cocaine in return for a small diamond ring. The exchange takes place. Mr. Johns is guilty of knowingly delivering a controlled substance because the term "delivery" includes a sale and the word "sale" includes barter or exchange.
3. Mr. Johns gives Mr. Blythe an "eight ball" of cocaine because he likes him. Mr. Blythe gives Mr. Johns absolutely nothing in return. Mr. Johns is guilty of knowingly delivering a controlled substance because the term "delivery" includes actual transfers of a controlled substance from one person to another.
4. Ms. Samuels agrees to sell Mr. Smith some marijuana for \$25.00. She accepts the money from Mr. Smith and then tells him she will have to go to another house, nearby, to get the marijuana. Prior to her return she is arrested on an outstanding traffic warrant and the marijuana is found on

her person. Samuels is guilty of an attempt to deliver a controlled substance since she took the substantial step of going to the other house and retrieving the marijuana in order to complete the delivery. For more information on attempts see chapter 4 of this Handbook.

5. Mr. Thomas comes to River City from Kansas City. He rents a motel room and begins to sell crack cocaine. Police officers secure a search warrant for his room, serve it, and find him in possession of 25 rocks of crack cocaine and \$2,000.00 cash. Mr. Thomas tells the officers he came to River City to sell crack cocaine because the competition has gotten too much for him in Kansas City. Mr. Thomas is guilty of delivery of a controlled substance because he knowingly possessed a controlled substance with the intent to deliver a controlled substance.
6. Mr. Smith contacts his next-door neighbor, Rodney Jones. Mr. Smith is 32 and Mr. Jones is 15. Mr. Smith sells Rodney a rock of crack cocaine for \$25.00. Mr. Smith is guilty of delivery of a controlled substance to a minor because he sold cocaine to a 15-year-old boy who was at least 2 years younger than he was.
7. Mr. Smith is 17 years old and wants to begin a career as a marijuana grower and distributor. He gives 2 oz. packages of his new product to his 14-year-old nephew to pass around school as a "marketing" technique. The nephew turns him in. Mr. Smith can be charged with a class B felony rather than a class C felony because he transferred marijuana to a 14-year-old who was more than two years younger than himself at the time of the transfer.
8. The same facts as stated except Mr. Smith is 15 years and ten months old. Mr. Smith can be charged with delivery of a controlled substance to a minor, but it cannot be enhanced to a class B felony because he is not at least two years older than the person he distributed to. He could be charged with the class C felony of delivery of a controlled substance.
9. Mr. Smith sells LSD to a minor who he knows is 14 years old. He is guilty of delivery of a controlled substance with a minor, a class B felony.
10. Sam Smith asks his Aunt Susie to give him money so that he may purchase some marijuana. Aunt Susie gives her 13-year-old nephew the money because she does not believe marijuana should be a controlled substance. Aunt Susie has knowingly permitted a minor child to purchase a controlled substance.

11. Mr. Smith uses 12 and 13-year-old children to transport crack cocaine from the front yard of his crack house into the front room, by a prearranged signal from him that the money has been paid to Smith by the buyer. The state can prove that Mr. Smith specifically recruited minors to hold and carry his drugs because the authorities would have to prosecute the minors as juveniles. Mr. Smith is guilty of delivery of a controlled substance with a minor because he knowingly permitted a minor child to transport illegally obtained controlled substances.

7.11 Manufacture of a Controlled Substance (§579.055)
Penalty Varies (See Below)

Elements:

A defendant commits the offense of manufacture of a controlled substance (§579.055) if (s)he:

1. knowingly
 - a. manufactures; OR
 - b. produces; OR
 - c. grows a controlled substance; OR
2. attempts to
 - a. manufacture; OR
 - b. produce; OR
 - c. grow a controlled substance; OR
3. knowingly possesses with the intent to
 - a. manufacture; OR
 - b. produce; OR
 - c. grow any amount of a controlled substance;

Penalty:

Manufacturing or attempting to manufacture any amount of a controlled substance, except thirty-five grams or less of marijuana or synthetic cannabinoid, is a class C felony. Manufacturing thirty-five grams or less of marijuana or synthetic cannabinoid is a class E felony. Manufacturing or attempting to manufacture any amount of controlled substance is a class B felony when committed within two thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, community college, college,

or university. It is a class A felony if a person has suffered serious physical injury or has died as a result of a fire or explosion started in an attempt by the defendant to produce methamphetamine.

Examples:

1. Mr. Orca is found in a field of marijuana harvesting the plants. He is not from the area, has never been seen in the field before, and admits that he was hired by Mr. X for \$200.00 to harvest and package the marijuana and leave it under a culvert by a nearby road. Mr. Orca is guilty of manufacture of a controlled substance because manufacture of a controlled substance includes harvesting a controlled substance.
2. Mr. Jones buys an abandoned trailer in a remote area of the county. He buys chemicals and lab equipment, which will allow him to manufacture LSD and other types of controlled substances. He puts his materials to work and goes into production. The police secure a search warrant, arrest the defendant, and he confesses to using the chemicals to produce controlled substances. Mr. Jones is guilty of manufacturing a controlled substance because the term “manufacture” includes the production, preparation, and compounding of a controlled substance by means of chemical synthesis.
3. Mr. Jones does not produce the controlled substance; instead, he gets it from his supplier and his job is to package and label it and place it into containers for shipment to the ultimate consumer. Mr. Jones is still guilty of manufacturing a controlled substance because the term “manufacture” includes the packaging or repackaging of the controlled substance or labeling or the re-labeling of its container.

**7.12 Distribution of a Controlled Substance in a Protected Location
(\$579.030)****Introduction:**

The offenses under this section were once separate offenses. When the criminal code was revised in 2014, the separate locations were merged into §579.030.

7.12A Distribution of a Controlled Substance in a Protected Location (§579.030) Near Schools**Elements:**

A person commits the offense of distribution of a controlled substance in a protected location near schools if s/he:

1. knowingly distributes, sells, or delivers
2. any controlled substances, except thirty-five grams or less of marijuana or synthetic cannabinoid
3. to a person
 - a. in; OR
 - b. on; OR
 - c. within 2,000 feet of;
4. the real property comprising a
 - a. public or private elementary school; OR
 - b. public or private secondary school; OR
 - c. public vocational school; OR
5. on any school bus.

Comments:

This offense enhances the punishment for delivery or distribution of any controlled substance to a Class A felony based solely on the location of the delivery. In order to prove this offense, you will need to prove the real estate boundaries of the school involved and accurately measure the distance from the delivery site to that boundary line. This is not within 2,000 feet of the school building but within 2,000 feet of the real estate comprising the school grounds. County Recorders of Deeds and County Surveyors can assist you in proving these facts. Remember this delivery does not have to involve minors, all it requires is a delivery within 2,000 feet of the real property boundary lines of a school.

7.12B Distribution of a Controlled Substance in a Protected Location (§579.030) Near a Park**Elements:**

A person commits the offense of distribution of a controlled substance in a protected location, near a park if (s)he:

1. knowingly distributes, sells or delivers
2. any controlled substances, except thirty-five grams or less of marijuana or synthetic cannabinoid

3. to a person
 - a. in; OR
 - b. on; OR
 - c. within one thousand feet of;
4. the real property comprising
 - a. a public park; OR
 - b. a state park; OR
 - c. a county park; OR
 - d. a municipal park; OR
 - e. a public or private park designed for recreational purposes and as defined in §253.010.

Comments:

Park is defined as any land, site or object primarily of recreational value or of cultural value because of its scenic, historic, archeological, scientific, or other distinctive characteristics or natural features.

This offense enhances the punishment for delivery or distribution of certain controlled substances to a class A felony based solely on the location of the delivery being in a park. Similar to the statute for distribution of a controlled substance near schools, to prove this offense you will need to prove the real estate boundaries of the park and accurately measure the distance of the delivery site to that boundary line. County Recorders of Deeds and County Surveyors can assist you in proving these facts.

7.12C Distribution of a Controlled Substance in a Protected Location (§579.030) Near Public Housing or other Government Assisted Housing**Elements:**

A person commits the offense of distribution of a controlled substance in a protected location, near public housing or other governmental assisted housing if (s)he:

1. knowingly distributes, sells or delivers
2. any controlled substances, except thirty-five grams or less of marijuana or synthetic cannabinoid
3. to a person
 - a. in; OR
 - b. on;
4. the real property comprising
 - a. public housing; OR

- b. other governmental assisted housing.

Comments:

This offense enhances the punishment for delivery or distribution of any controlled substance to a Class A Felony based solely on the location of delivery. Similar to the statute for distribution of a controlled substance near schools, to prove this offense you will need to prove the real estate boundaries of the public housing or other governmental assisted housing involved. Unlike schools and parks the offense has to occur in or on the real property and not a measured distance from the property boundary lines. County Recorders of Deeds and County Surveyors can assist you in proving these facts. Remember this delivery does not have to involve the denizens of the public or governmental assisted housing; all it requires is a delivery in or on the real property boundary lines of the public housing or other governmental assisted housing.

**7.13 Use or Possession of Drug Paraphernalia (§579.074)
Penalty Varies (See Below)****Elements:**

A person commits the offense of possession or use of drug paraphernalia if s/he knowingly:

1. uses, or possesses with intent to use
2. drug paraphernalia;
3. to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body
4. a controlled substance or imitation controlled substance.

Comments:

Drug paraphernalia is defined very broadly in §195.010(17). This definition is so lengthy, it cannot be reproduced here, but you should familiarize yourself with it. This definition also lists 15 factors which courts may use in determining whether a person is in possession of drug paraphernalia.

Penalty:

Possession of drug paraphernalia is a class D misdemeanor, unless the person has previously been found guilty of any offense of the laws of this state related to controlled substances or of the laws of another jurisdiction related to controlled substances, in which case the violation of this section is a class A misdemeanor; OR Possession of drug paraphernalia is a class E felony if the person uses, or possesses with intent to use, the paraphernalia in combination with each other to manufacture, compound, produce, prepare, test, or analyze amphetamine or methamphetamine or any of their analogues.

7.14 Unlawful Manufacture of Drug Paraphernalia (§579.076)**Penalty Varies (See Below)****Elements:**

A person commits the offense of unlawful manufacture of drug paraphernalia if (s)he:

1. unlawfully manufactures with intent to deliver
2. drug paraphernalia
3. knowing, or under circumstances where one would reasonably know
4. that the paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body
5. a controlled substance or an imitation controlled substance.

Comments:

The offense of unlawful manufacture of drug paraphernalia is a class A misdemeanor, unless done for commercial purposes, in which case it is a class E felony.

Example:

Mr. Jones delivers a set of grow lights that he built, fertilizer, pots, and a quantity of water proof bags to his friend Mr. Smith. While unloading the material he sees an area where Mr. Smith is obviously drying and packing marijuana in water proof bags.

Mr. Jones accepts and delivers another order of the same material to Mr. Smith. Mr. Jones is guilty of manufacturing drug paraphernalia because he knew or

reasonably should have known his new order would be used to cultivate, process, pack, or contain marijuana.

**7.15 Unlawful Advertising of Drug Paraphernalia or Advertising or
Solicitation of Imitation Controlled Substances (§195.244)**
Class B Misdemeanor

Elements:

A person commits the offense of unlawful advertising of drug paraphernalia or advertising or solicitation of imitation controlled substances if (s)he:

1. a. places in any newspaper, magazine, handbill, or other publication any advertising; AND
 - b. knows or reasonably should have known
 - c. the purpose of the advertisement, in whole or in part, was to promote the sale of objects designed or intended for use as drug paraphernalia
2. a. places in any newspaper, magazine, handbill, or other publication any advertisement or solicitation; OR
 - b. posts or distributes in any public place any advertisement or solicitation; AND
 - c. knows or reasonably should have known
 - d. the purpose of the advertisement or solicitation was to promote the distribution of imitation controlled substances.

Comments:

The statute appears to exclude broadcast advertising. The statute specifies "objects intended for use as drug paraphernalia." "Drug paraphernalia" is defined in §195.010(17). Advertisements for objects such as syringes appearing in drug related publications may suggest they are being advertised for illegal use as drug paraphernalia.

Example:

"Record High" (a head shop and record bar) puts an ad in the student newspaper advertising a sale on grow lights, books on the historical uses and cultivation of marijuana, and hydroponics growing equipment. The person who places the ad may be guilty of unlawful advertising of drug paraphernalia if the jury finds that (s)he knew or reasonably should have known that these items can be used to manufacture marijuana.

7.16 Miscellaneous Offenses

The following offenses are listed in the Comprehensive Drug Control Act, but they would not be encountered in the normal course of police work often enough to be included in detail. However, listed below is the name, section number, and punishment for these offenses in case you do run across a set of facts where such an offense might apply.

1. Distribution of controlled substance in violation of registration requirements; §579.084(1) and (2); class E felony.
2. Failure to Keep Records Required by §195.050; §579.084(3); class A misdemeanor.
3. Delivery by a Manufacturer or Distributor of a Controlled Substance for Illegal Use; §579.086; class E felony.

**7.17 Marketing of Ephedrine or Pseudoephedrine (§579.082)
Class E Felony****Elements:**

A person commits the offense of unlawful distribution of ephedrine if (s)he:

1. Markets, sells, distributes, advertises, or labels
 - a. any drug product containing ephedrine, its salts, optical isomers; OR
 - b. any drug product containing pseudoephedrine, its salts, optical isomers and salts of optical isomers;
2. For indication of
 - a. stimulation; OR
 - b. mental alertness; OR
 - c. weight loss; OR
 - d. appetite control; OR
 - e. energy; OR
 - f. other indications not approved pursuant to the pertinent federal over-the-counter drug Final Monograph or Tentative Final Monograph (regulations promulgated by the FDA relating to approved uses of various drugs) or approved new drug application.

Comment:

Ephedrine is a schedule IV drug that has central nervous system stimulating effects similar to the amphetamines. Ephedrine is a precursor in the production of methamphetamine. Ephedrine is also an ingredient in a number of products sold over the counter in convenience stores or via mail order that advertise

themselves as stimulants or diet aids. This statute regulates the possession and usage of ephedrine.

7.18 Over-the-Counter Sale of Methamphetamine Precursor Drug**(§579.060)****Class A Misdemeanor**

Note: The limits in this section do not apply to substances which must be dispensed pursuant to a valid prescription.

Elements:

1. No person shall deliver to the same individual, nor shall any person receive more than seven and two-tenths grams within a thirty-day period of any methamphetamine precursor drug (i.e., ephedrine, phenylpropanolamine, pseudoephedrine, or any of their salts or optical isomer or salts of optical isomers either as the sole active ingredient, or one of the active ingredients of a combination drug or a combination of any these products). Unless the amount is purchased, received, or acquired pursuant to a valid prescription.
2. No pharmacist (intern or tech) shall deliver to the same individual and no person may receive more than three and six tenths grams of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their salts or optical isomers, or salts of optical isomers either as the sole active ingredient, or one of the active ingredients of a combination drug or a combination of any of them without regard to the number of transactions.
3. No person shall deliver to the same individual, nor shall any person receive more than forty-three and two-tenths grams within a twelve-month period of any methamphetamine precursor drug (i.e., ephedrine, phenylpropanolamine, pseudoephedrine, or any of their salts or optical isomer or salts of optical isomers either as the sole active ingredient, or one of the active ingredients of a combination drug or a combination of any these products). Unless the amount is purchased, received, or acquired pursuant to a valid prescription.

Note: Pharmacies must submit information regarding sales of these products in accordance with established transmission methods and frequencies. All logs, records and other documents maintained in compliance with this section must be open for inspection and copying by law enforcement officers whose duty it is to enforce the State and Federal drug laws.

**7.19 Limit on the Retail Sale of Methamphetamine Precursor Drugs
(\$579.060)**

Class A Misdemeanor

Elements:

The retail sale of methamphetamine precursor drugs shall be limited to:

1. Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine base, pseudoephedrine base and phenylpropanolamine base; AND
2. For non-liquid products, sales in blister packs, each blister containing not more than two dosage units, or where the use of blister packs are technically infeasible, sales in unit dose packages or pouches.

Comments:

This section limits the quantity of methamphetamine precursor drugs that can be contained in a package, to specified amounts. Any person holding a retail sales license, who knowingly violates this provision, is guilty of a class A Misdemeanor. Note, that the owner or operator of the retail outlet where such drugs are sold, cannot be held responsible under these sections if such owner provides a training program to employees providing employees with information on state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.

**7.20 Penalty Ranges For Possession, Delivery, Distribution,
Manufacturing, And Production Of Controlled Substances**

Introduction

Each offense in Chapter 579 relating to possession, delivery, manufacturing, or production has a “base punishment range.” This base punishment range can be enhanced into a higher penalty range because the defendant possessed, delivered, distributed, manufactured, or produced certain quantities of a controlled substance or because the defendant has drug related prior felony convictions.

All of the base punishment ranges will be felonies except marijuana possession of more than 10 grams but 35 grams or less which is a class A misdemeanor and the possession of 10 grams or less is a class D misdemeanor unless they have previously been found guilty of a drug offense, the offense is a class A misdemeanor. (see §579.015 and §579.055).

Enhancement Of Punishment for Possession or Purchases of Certain Quantities of Controlled Substances (§579.068)

1. For possession of all controlled substances, **except 35 grams or less of marijuana or any synthetic cannabinoid**, the base punishment range is a class D felony (§579.015(2)).
2. In order to increase the punishment ranges for possession of certain quantities of controlled substances from a class D felony to a class C, class B or class A felony the legislature enacted (§579.068).

**7.20A Drug Trafficking in the Second Degree (§579.068)
Penalty Varies (See Below)**

A person commits the offense of **drug trafficking in the second degree** if (s)he knowingly:

1. possesses or has under his/her control; OR
2. purchases; OR
3. attempts to purchase; OR
4. brings into this state
5. certain quantities of a controlled substance.

Penalty:

The following table will show you what the required quantities are for this offense. Based upon the amount of the controlled substance the defendant had, (s)he will be charged with a class C, class B or class A felony. The punishment range for misdemeanor possession of marijuana cannot be increased.

(See table on next page for Drug Trafficking in the Second Degree)

Examples:

1. Mr. Jones possesses ten grams of cocaine. This is a class D felony because it is not over 150 grams.
2. Mr. Jones possesses 200 grams of cocaine. This is trafficking in the second degree (which makes it a class C felony) because it is over 150 grams, but less than 450 grams.
3. Mr. Jones possessed 600 grams of cocaine. This is trafficking in the second degree which makes it a class B felony because it is over 450 grams.
4. Mr. Jones purchases 750 marijuana plants in Missouri. Mr. Jones is guilty of trafficking in the second degree because he has purchased more than 500 marijuana plants. This would be a class B felony.

POSSESSION OR PURCHASING (Trafficking Second Degree)

Heroin (§579.068(1))	m/30 g	class C felony	90 g/m	class B felony
Cocaine (§579.068(2))	m/150 g	class C felony	450 g/m	class B felony
Crack (§579.068(3))	m/8 g	class C felony	24 g/m	class B felony
LSD (§579.068(4))	m/500 mg	class C felony	1 g/m	class B felony
PCP (mixture) (§579.068(5))	m/30 g	class C felony	90 g/m	class B felony
PCP (pure) (§579.068(6))	m/4 g	class C felony	12 g/m	class B felony
Marijuana (§579.068(7))	m/30 kg	class C felony	100 kg/m m/ 500 plants	class B felony
Amphetamines or Methamphetamine (§579.068(8))*	m/30 g	class C felony	90 g – less than 450 g	class B felony
3,4- methylenedioxymethamphetamine (ecstasy) (§579.068(9))*	m/30 g	class C felony	90 g – less than 450 g	class B felony
Fentanyl or Carfentanil (§579.068(10))	m/10 mg	class C felony	20 mg/m	class B felony
Flunitrazepam (§579.068)	Less than 1 g 1st Offense	class C felony	Less than 1 g 2nd Offense	class B felony

mg = milligrams, g = grams, kg = kilograms, m/# = more than, #/m = or more

* If the quantity involved is four hundred fifty grams or more, the person shall be guilty of a class A felony.

**Enhancement of Punishment for The Attempt to or The Delivery,
Distribution, Manufacture, Or Production of Certain Quantities of
Controlled Substances (§579.065)**

1. Delivery, distribution, manufacture, or production of all controlled substances (except five grams or less of marijuana) has a base punishment range of a class C felony (§579.020(2) and §579.055(3)).
2. Delivery or distribution of thirty-five grams or less of marijuana has a base punishment range of a class E felony (§579.020(3)).
3. In order to increase the punishment ranges for delivery, distribution, manufacture, or production of certain quantities of controlled substances from a class C felony to a class B felony or class A felony the legislature enacted (§579.065).

**7.20B Drug Trafficking in the First Degree (§579.065)
Penalty Varies (See Below)**

A person commits the offense of drug trafficking in the first degree if (s)he knowingly:

- a. distributes; OR
- b. delivers; OR
- c. manufactures; OR
- d. produces; OR
- e. attempts to distribute, deliver, manufacture, or produce
- f. certain quantities of a controlled substance.

Penalty:

The following table will show you what the required quantities are for this offense. Based upon the amount of the controlled substances the defendant distributed, delivered, manufactured, or produced (s)he will be charged with a class B or class A felony.

(See table on next page for Drug Trafficking in the First Degree)

**DELIVERY, DISTRIBUTION, MANUFACTURE, OR PRODUCTION
(Trafficking First Degree)**

Heroin (§579.065(1))	m/30 g	class B felony	90 g/m	class A felony
Cocaine (§579.065(2))	m/150 g	class B felony	450 g/m	class A felony
Crack (§579.065(3))	m/8 g	class B felony	24 g/m	class A felony
LSD (§579.065(4))	m/500 mg	class B felony	1 g/m	class A felony
PCP (mixture) (§579.065(5))	m/30 g	class B felony	90 g/m	class A felony
PCP (pure) (§579.065(6))	m/4 g	class B felony	12 g/m	class A felony
Marijuana (§579.065(7))	m/30 kg	class B felony	100 kg/m	class A felony
Amphetamines or Methamphetamines (§579.065(8))	m/30 g	class B felony	90 g/m	class A felony *
3,4-Methylenedioxymethamphetamine (ecstasy) (§579.065(9))	m/30 g	class B felony	90/m g	class A felony *
Flunitrazepam (§579.065(10))	1 g/m 1st Offense	class B felony	1 g/m 2nd Offense	class A felony
Gamma-hydroxybutyric Acid (§579.065(11))	Any amount 1st Offense	class B felony	Any amount 2nd Offense	class A felony
Fentanyl or Carfentanil (§579.065(12))	m/10 mg	class B felony	20 mg/m	class A felony

g = grams, kg = kilograms, mg = milligrams, m/# = more than, #/m = or more

* See Note on next page.

Note: For amphetamines, methamphetamines, 3,4-methylenedioxymethamphetamines and their analogues: if the quantity involved is ninety grams or more, or if the quantity involved was thirty grams or more and the location of the offense was within two thousand feet of a school or public housing, or within a motor vehicle, or any structure or building which contains rooms furnished for the accommodation or lodging of guests, and kept, used maintained, advertised, or held out to the public as a place where sleeping accommodations are sought for pay or compensation to transient guests or permanent guests, the offense is a class A felony.

Examples:

1. Mr. Smith manufactures 109 kilograms of marijuana. Mr. Smith is guilty of trafficking in the first degree which makes it a class A felony because it is over 100 kilograms.
2. Mr. Smith sells ten grams of heroin to Miss Brown. This is a class C felony because it is not over 30 grams.
3. Mr. Smith sells 40 grams of heroin to Miss Brown. This is trafficking in the first degree which makes it a class B felony because it is more than 30 grams but less than 90 grams.
4. Mr. Smith sells 100 grams of heroin to Miss Brown. This is trafficking in the first degree which makes it a class A felony because it is over 90 grams.

Enhancement of Punishment Because Defendant Has Prior Drug Related Felony Convictions (§558.016)

Prior to the revision of the criminal code sentencing enhancements for “prior” or “persistent” drug offenders were included in Chapter 195. The Revised Criminal Code repealed those sections in Chapter 195. Sentencing enhancements for the repeat drug offenders are now included in §558.016. This section governs extended terms for all offenses except those offenses that have their own enhancements.

See also ¶7.1 of this book.

**7.21 Possession, Use, or Inducement to Use Solvents Prohibited
(§§579.097-579.101)
Penalty Varies (See Below)****Elements:**

1. A person violates §579.097 if (s)he:
 - a. Intentionally
 - b. smells, or inhales

- c. the fumes of any solvent, particularly toluol, amyl nitrite, butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite, and propyl nitrite and their iso-analogues; OR
 - d. induces any other person to do so for the purpose of causing a condition, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of senses or nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes (this section does not apply to the inhalation of any anesthesia for medical or dental purposes).
2. A person violates (§579.099(2)) if (s)he:
 - a. intentionally or willfully induces
 - b. the symptoms described in 1.d. above
 - c. by the use of any solvent, particularly toluol, ethyl alcohol, amyl nitrite and its iso-analogues, butyl nitrite and its iso-analogues; cyclohexyl nitrite and its iso-analogues; ethyl nitrite and its iso-analogues; pentyl nitrite and its iso-analogues; and propyl nitrite and its iso-analogues.
 3. A person violates (§579.101) if (s)he:
 - a. Intentionally
 - b. possesses or buys
 - c. any solvent, particularly toluol
 - d. for the purpose of using it in the manner prohibited by §579.097 to (§579.101).

Penalty:

The penalty for the first violation of any of these statutes is a class B misdemeanor and becomes a class E felony for any subsequent violations.

Example:

Terry's dad is in the hardware business. Terry is approached by Mark, John, and June to get some solvent for them. Terry sells Mark, John, and June three cans of solvent. These three decide to have a party that very night and invite ten people. At the party Mark, John, and June inhale the solvent and pass it around. All who willingly inhale the fumes, for the purpose of getting "high" have violated this section. Also mark, John, and June are guilty because they have:

1. intentionally inhaled the solvent in order to get high;
2. intentionally induced an artificial high; AND/OR
3. intentionally bought and kept the solvent for the purpose of getting high.

7.22 Selling or Transferring Solvent Prohibited (§579.103)
Class D Felony

No person shall:

1. knowingly and intentionally
2. sell or otherwise transfer possession
3. of any solvent, particularly toluol, amyl nitrite, butyl nitrite, cyclohexyl nitrite, ethyl nitrite, pentyl nitrite, and propyl nitrite and their iso-analogues
4. to any person
5. for the purpose of causing a condition, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of senses or nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes.

Example:

The hardware store owner who sold the solvent to Terry in the example under the preceding section is not guilty of violating this section because there was no evidence that he knew that the solvent would be used to cause intoxication. Terry would be guilty, however.

Cross References:

Knowingly

Related Offenses:

Possession or use of solvents prohibited (¶7.21).

7.23 Unlawful Endangerment of Another (§579.070)
Class C Felony

A person commits the offense of unlawful endangerment of another if that person:

1. is engaged in the enterprise for the production of a controlled substance;
AND
2. protects or attempts to protect the production of a controlled substance by creating or setting up any device/weapon,
3. which causes or is intended to cause physical injury to another person.

Comment:

This offense applies to the illicit drug producer who sets traps as in “booby-trapping” the perimeter of a marijuana field.

7.24 Possession of Imitation Controlled Substances (§579.078)

Class A Misdemeanor

A person commits the offense of possession of imitation controlled substances if (s)he:

1. knew of the presence of the substance; AND
2. knew of the illegal nature of the substance; AND
3. had actual or constructive possession of the substance; AND
4. the substance was an imitation controlled substance.

Discussion:

An imitation controlled substance is defined as, “a substance that is not a controlled substance, but which by dosage unit appearance (including color, shape, size, and markings) or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. The following facts are useful in determining whether something is an imitation controlled substance:

1. Whether the substance was approved by the Federal Food and Drug Administration for over-the-counter (nonprescription or non-legend) sales and was sold in the Federal Food and Drug Administration approved package, with the Federal Food and Drug Administration approved labeling information; OR
2. Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effects; OR
3. Whether the substance is packaged in a manner normally used for illicit controlled substances; OR
4. Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud; OR
5. The proximity of the substance to controlled substances; OR
6. Whether the consideration tendered in exchange for the non-controlled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where

applicable, the price at which over-the-counter substances of like chemical compositions sell.

Discussion:

For a discussion of possession please see ¶7.9 of this handbook.

7.25 Delivery of Imitation Controlled Substances (§579.080)
Class E Felony

A person commits the offense of delivery or manufacture of imitation controlled substances if (s)he:

1. delivers; OR
2. possesses with the intent to deliver; OR
3. causes to be delivered
4. any imitation controlled substance.

Discussion:

Please see the definition of imitation controlled substance in ¶7.24 of this handbook. Please see the discussion of delivery ¶7.10 and manufacture in ¶7.11 of this handbook.

7.26 Possession of Anhydrous Ammonia (§579.095)
Class E Felony**Elements:**

A person commits the offense of possession of anhydrous ammonia in a non-approved container if (s)he:

1. Possesses
2. any quantity of anhydrous ammonia
3. in a container other than:
 - a. A tank truck; OR
 - b. A tank trailer; OR
 - c. A rail tank car; OR
 - d. A bulk storage tank; OR
 - e. A field (nurse) tank; OR
 - f. A field applicator; OR
 - g. Any container approved for anhydrous ammonia by the Department of Agriculture or the United States Department of Transportation.

Chapter 8

Robbery, Arson, Burglary, and Related Offenses

8.1 Introduction

This chapter covers the offenses of robbery, arson and related offenses, causing catastrophe, tampering, odometer frauds, property damage offenses, trespass, and burglary.

8.2 Robbery Offenses

Introduction

In light of their character as aggravated property offenses or quasi-personal offenses, and in keeping with the underlying principle of proportionality, the robbery provisions have been modified in one notable aspect. Under the Revised Criminal Code, **the element of physical injury to another person** has been added to robbery in the second degree. Furthermore, robbery in the first degree has been expanded to **include stealing any controlled substance from a pharmacy**.

8.3 Robbery in the First Degree (§570.023)

Class A Felony

Elements:

A defendant forcibly steals property and in the course thereof (s)he, or another participant in the offense:

1. Causes serious physical injury to any person; or
2. Is armed with a deadly weapon; or
3. Uses or threatens the immediate use of a dangerous instrument against any person; or
4. Displays or threatens the use of what appears to be a deadly weapon or dangerous instrument; or
5. Steals any controlled substance from a pharmacy.

8.4 Robbery in the Second Degree (§570.025) Class B Felony

Elements:

A defendant forcibly steals property and in the course thereof causes physical injury to another person.

Comments:

Both robbery in the first and second degree require that the defendant "forcibly steal" property. The idea behind "forcibly stealing" is to combine the concept of stealing with the additional element of force or threat of force used to accomplish the stealing. For first degree robbery, the forcible stealing must have been accompanied by one of the five listed aggravating factors, which may have been caused by either the suspect or an accomplice. The purpose of this section is to single out those situations where the victim is placed in unusually great danger or fear of bodily injury.

As is true with robbery in the second degree, robbery in the first degree applies where physical force is threatened or applied to one person which results in property being obtained from another person. However, the force that is used or threatened must be accompanied by one of the aggravating factors listed in the statute.

Examples:

1. The suspect walks into a store, points a realistic looking toy gun at the cashier, and demands the money from the cash register. The cashier, believing the gun to be real, gives the suspect the money. Robbery in the first degree was committed since the suspect displayed and threatened to use what appeared to be a deadly weapon.
2. Donald threatens to strike Smith on the head with a baseball bat unless Smith calls his wife and tells her to put property at a designated spot. Smith complies, the money is delivered and Donald later retrieves the property. Since the transfer of property was occasioned by the threat of use of a dangerous instrument against Smith, first degree robbery was committed. **Note** that the baseball bat fits the code definition of a "dangerous instrument" under these circumstances, since its threatened use is capable of producing death or serious physical injury.
3. Smith is eating lunch at a restaurant and Donald, who has an unloaded .38 caliber handgun in his pocket, walks by and picks up Smith's briefcase intending to steal some important documents which are in the briefcase.

Smith approaches Donald in an effort to get his property back but Donald strikes him with his fist rendering Smith unconscious. Donald leaves with the property. Donald has committed robbery since he has used physical force to prevent Smith from regaining possession of his property immediately after it was taken from him. The offense is aggravated to first degree robbery since Donald forcibly stole property and was armed with a deadly weapon. The fact that the firearm was not loaded is immaterial to its being defined as a deadly weapon.

Cross References:

Dangerous instrument
Deadly weapon
Forcibly steals
Serious physical injury

Related Offense:

Stealing ¶9.3

8.5 Arson and Related Offenses**Introduction**

The Criminal Code contains six sections covering damage or destruction of buildings, habitable structures, and other property by fire or explosion. The offenses are graded according to the item damaged or destroyed and the mental state of the defendant.

**8.6 Arson in the Third Degree (§569.053)
Class A Misdemeanor****Elements:**

A person commits the offense of arson in the third degree if (s)he:

1. knowingly starts a fire; **or**
2. causes an explosion; **and thereby**
3. recklessly damages or destroys a building or an habitable structure of another.

8.7 Arson in the Second Degree (§569.050)
Penalty Varies (See Below)**Elements:**

A person commits the offense of arson in the second degree if (s)he:

1. knowingly damages a building or inhabitable structure
2. by starting a fire
3. or causing an explosion.

NOTE: Second degree is not committed if:

1. the building or structure is destroyed for a lawful and proper reason; AND
2. (s)he has the consent of all persons with
 - a. possessory (tenant, lessee);
 - b. proprietary (ownership); OR
 - c. security (mortgagor-lender) interests.

Penalty:

Arson in the Second Degree is a Class D Felony, unless a person has suffered serious physical injury or has died, then it is a Class B Felony.

Comments:

See comments after first degree arson, at ¶8.8.

8.8 Arson in the First Degree (§569.040)
Penalty Varies (See Below)**Elements:**

A person commits the offense of arson in the first degree if (s)he:

1. Knowingly damages a building or inhabitable structure by causing a fire or explosion; AND
2. Any person is in or near the building or inhabitable structure when the fire is started; AND
3. is recklessly put in danger of death or serious physical injury.

OR

A person commits the offense of arson in the first degree:

1. By starting a fire or explosion, damages a building or inhabitable structure in an attempt to produce methamphetamine.

Penalty:

Arson in the First Degree is a Class B felony. If a person has suffered serious physical injury or death as a result, or a fire or explosion was started in an attempt by the defendant to produce methamphetamine, then it is a class A felony.

Comments:

The Code divides arson into three grades: first degree, second degree, and third degree arson. These statutes are concerned with the intentional damage or destruction of buildings or inhabitable structures. According to (§556.061(30)), an inhabitable structure includes a vehicle, vessel or structure:

1. where people live or do business;
2. where people gather for purposes of business, government, education, religion, entertainment, or public transportation; OR
3. are used for overnight accommodations.

Second degree arson is committed when the defendant intentionally damages or destroys a structure by means of fire or explosion. First degree arson requires an additional element, the creation of the risk of death, or serious harm to a person in or near the building or structure at the time the fire was started. A person commits first degree arson if (s)he intentionally sets fire to a building or inhabitable structure and is aware of the substantial risk that someone is inside or nearby and is in danger of death or serious bodily harm from the fire. This prevents all arson from becoming first degree since firemen and others will be drawn to the scene after the fire has begun. A greater penalty is provided for first degree arson because of the indifference to human life shown by intentionally creating a risk of death or serious harm.

If a defendant is guilty of second degree arson and someone suffered serious physical injury or death as a result of the fire or explosion caused by the defendant, (s)he is guilty of a class B felony.

Otherwise, second degree arson is a Class D felony. If a defendant is guilty of first degree arson and someone suffered serious physical injury or death as a result of the fire or explosion, the defendant is guilty of a class A felony. Otherwise, first degree arson is a class B felony. **NOTE:** If a person is killed as a result of the arson, a second degree murder (felony murder) charge can be brought, regardless of the degree of arson.

Under the Code there are two situations in which a defendant can be convicted of arson even though the property is his/her own. If the defendant recklessly places another in danger of death or serious physical injury, (s)he may be convicted of

first degree arson regardless of who owns the property. Second, if the defendant destroys property for an unlawful purpose, such as defrauding an insurance company, (s)he is guilty of arson in the second degree.

This section includes an exception to a second degree arson charge. If a person has a lawful reason for destroying a building or inhabitable structure, and owns it, or has the permission of all persons with an interest in the building to destroy it, there is no arson.

Upon request, insurance companies are required to disclose all facts and information in their possession or knowledge concerning any reported fire losses. Unless it would jeopardize a pending prosecution, law enforcement have the reciprocal duty to disclose, upon request, information concerning reported fire losses to insurance companies (§320.081-§320.083).

Examples:

1. Peter creates an explosive device and leaves it in his barn. The device detonates and destroys the barn. Authorities learn that the barn was security for a loan Peter had with First State Bank and was insured. Peter is guilty of second degree arson.
2. Same as above, except that the barn is owned by Peter free and clear. It was not insured. Peter is not guilty of any offense (provided no one was put in danger of death or serious injury).
3. Jeff was a cook at Diamond Jim's restaurant and was fired. One night, after everyone had left the restaurant, he went inside and started some rags on fire in the basement. The cleaning crew came in two hours later and was present when the fire in the basement spread throughout the restaurant. One of the members of the cleaning crew was seriously injured. If Jeff recklessly put the cleaning crew in danger of death or serious physical injury he is guilty of arson in the first degree. He may argue that the crew came in early so that he had no way to know they would be around. If his actions were only negligent in that respect and not reckless, he may be guilty only of arson in the second degree. The class of felony under arson in the first or second degree will be the highest available, however, because a serious physical injury resulted to the cleaning crew worker.

Cross References:

- Knowingly
Inhabitable structure
Recklessly
Serious physical injury

Related Offenses:

Knowingly burning or exploding	¶8.9
Reckless burning or exploding	¶8.10
Negligent burning or exploding	¶8.11

8.9 Knowingly Burning or Exploding (§569.055)
Class E Felony

Elements:

A person commits the offense of knowingly burning or exploding if (s)he:

1. knowingly damages
2. property
3. of another
4. accomplished by
 - a. starting a fire; OR
 - b. causing an explosion.

Comments:

Arson requires burning or exploding a building or inhabitable structure. This offense of knowingly burning or exploding covers damage to any kind of property.

All that is required is the actor start a fire or cause an explosion knowing another's property will be damaged as a result.

Examples:

1. Donald sees his neighbor's car, knows that it has a leak in the gas tank, and he also sees a small pool of gas underneath the car. Donald lights a match and throws it under the car. A fire results which destroys the car. Donald has committed knowingly burning and exploding since he started a fire which he knew was substantially certain to damage another's property.
2. Al owns an old wooden wagon which he no longer wants. No one else has any ownership interest in the wagon, and there is no insurance coverage involved. He sets his wagon on fire which destroys it. Al has not committed the offense of knowingly burning or exploding since the property which he knowingly damaged was not the property of another.

Cross References:

Knowingly
Property of another

8.10 Reckless Burning or Exploding (§569.060)
Class B Misdemeanor

Elements:

A person commits the offense of reckless burning or exploding if (s)he:

1. damages or destroys
2. property
3. of another
4. accomplished by
 - a. recklessly starting a fire; OR
 - b. recklessly causing an explosion.

Comments:

This offense is designed to cover situations in which the defendant's purpose is not to damage or destroy, but that result (nevertheless) occurs and the defendant was aware of a substantial and unjustifiable risk that such damage would occur. If property of another is recklessly damaged, then *any* damage, no matter how slight, is all that is necessary for the commission of this offense. The individual must know that (s)he is starting a fire or will cause an explosion and be aware of the substantial risk that property will be damaged.

Example:

Donald decides to burn his garbage on an extremely windy day. Donald's neighbor owns a barn, which is close to where Donald is burning the garbage, and the barn is downwind from the spot where the fire will be. The barn is made of wood. Donald is aware that if he proceeds to burn his garbage in that location, the flames might carry to the barn and cause it to ignite. He sets the garbage on fire anyway, the wind spreads the flames, and the barn is damaged as a result. Because he knowingly started a fire and was aware of the risk of the fire spreading, and the fire did spread and damage a building (barn), Donald has recklessly damaged property by knowingly starting a fire; therefore, he has committed the offense of reckless burning or exploding.

Cross Reference:

Knowingly
Recklessly
Inhabitable structure
Property of another

8.11 Negligent Burning or Exploding (§569.065)
Class C Misdemeanor

Elements:

A person commits the offense of negligent burning or exploding if (s)he:

1. with criminal negligence
2. causes damage
3. to property or to the woodlands, cropland, grassland, prairie, or marsh of another
4. accomplished by
 - a. fire or explosion, OR
 - b. by allowing a fire burning on lands in his/her possession or control onto the property of another.

Comments:

This section also deals with those situations where an individual creates a fire or explosion that damages property but it is not his/her purpose or intention to destroy property. However, in contrast to the previous section (8.10) the defendant does not have to knowingly start a fire or explosion; (s)he only has to start it through criminal negligence. Also, in contrast to 8.10, the defendant is not required to be aware of any risk of property damage. Instead, (s)he must damage property with criminal negligence, which means that although (s)he was not aware of a substantial and unjustifiable risk of property damage from fire or explosion, (s)he should have been aware of the risk.

Note-that "property damage" as used in this section means damage to any property of another and is not limited to buildings or inhabitable structures.

Examples:

1. Donald prepares to conduct a blasting operation in an area located adjacent to a small hill. He does not know what is on the other side of that hill, and although it would take very little effort, he does not investigate. He causes an explosion, which hurls rocks and other debris onto a car located on the other side of the hill, and the car is damaged as a result. He probably has committed the offense of negligent burning or exploding. The jury could find his conduct was a gross deviation from the amount of

care a prudent person would have exercised in this situation, especially in light of the risk of damage to property likely to occur from an explosion and the ease with which he could have investigated before starting the blasting in that area.

2. A certain county where there is a lot of agricultural activity is experiencing an extreme drought. The fields and trees are very dry, and fire warnings are made frequently on radio, television, and in the newspaper. Donald is a local resident of the county and has often heard these fire warnings. He carelessly tosses a burning cigarette out of his car window, which causes a fire that burns Smith's corn field down. Although it will be a jury question, Donald's conduct in these circumstances may be a gross deviation from the standard care that a prudent person would have exercised. If so, the fire would have been started due to the criminal negligence of Donald and he may be guilty of negligent burning or exploding.

Cross References:

Criminal negligence
Property of another

8.12 Causing Catastrophe (§574.080)
Class A Felony**Elements:**

A person commits the offense of causing catastrophe if (s)he:

1. knowingly causes
 - a. death or serious physical injury to ten or more people; OR
 - b. substantial damage to five or more buildings or inhabitable structures; OR
 - c. substantial damage to a vital public facility which seriously impairs its usefulness or operation;
2. accomplished by
 - a. explosion; OR
 - b. fire; OR
 - c. flood; OR
 - d. collapse of building; OR
 - e. release of poison; OR
 - f. radioactive material; OR
 - g. bacteria; OR
 - h. virus; OR
 - i. other substance or force which is dangerous or difficult to confine.

Comments:

Causing catastrophe is a statutory section that has no counterpart in pre-Code law. This section is designed to deal with conduct that causes either serious personal injury to a number of people (though not necessarily death) or substantial property damage.

If a structure was a vital public facility, but has been completely abandoned and is no longer maintained for use, then knowingly damaging the structure will not constitute the offense of causing catastrophe. Also, the words "vital public facility" contemplate use by the public and not just a structure owned and maintained for purely private use, such as a small bridge over a creek on private property. A vital public facility includes a facility maintained for use as a:

1. bridge over either land or water; OR
2. dam; OR
3. reservoir; OR
4. tunnel; OR
5. communications installation; OR
6. power station.

Examples:

1. Donald places a bomb in a locker at a crowded airport terminal knowing the explosion will injure many people. The bomb explodes causing serious physical injury to ten people. Donald has committed the offense of causing catastrophe.
2. David is a car salesman in fierce competition with his rival Bob who sells sport cars. One night, David starts a fire in Bob's used car lot and seriously damages over one hundred automobiles. Although David has knowingly caused substantial property damage by starting a fire, he has not caused a catastrophe since the automobiles are not defined as inhabitable structures.
3. Donald places a bomb on a bridge used by a substantial number of people who commute to a downtown area from outside the city. The bomb explodes, destroying part of the bridge. Although no one is injured, Donald has still caused catastrophe since he has seriously impaired the usefulness and operation of a vital public facility.

Cross References:

Knowingly
Inhabitable structure
Serious physical injury

Vital public facility

8.13 Tampering in the First Degree (§569.080)
Class D Felony

Elements:

A person commits the offense of tampering in the first degree if (s)he:

1. a. for the purpose of causing a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection;
- b. damages or tampers with property or facilities of such a utility or institution; AND
- c. thereby causes substantial interruption or impairment of services; OR
2. a. (s)he knowingly
- b. receives, possesses, sells, or unlawfully operates
- c. an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle
- d. without the consent of the owner.

Comments:

Joyriding is considered tampering in the first degree for the driver; joyriding passengers are guilty of tampering in the second degree.

Strict controls have been placed on businesses that deal in dismantled and wrecked cars in an attempt to cut down on automobile theft. Any person who purchases or sells four or more vehicles a year must be licensed by the Department of Revenue (§301.218) to legally: sell used motor vehicle parts, wreck or dismantle vehicles for resale of parts, rebuild wrecked or dismantled vehicles, or to possess scrapped vehicles. Only persons obtaining the license may legally attend salvage disposal sales of wrecked vehicles. The license holder who purchases at a sale must apply for a salvage certificate of title for vehicles seven years old or newer. Every license holder must maintain a three year record of every vehicle identification number and every wrecked vehicle purchased, sold, dismantled, or disposed of. Such records may be inspected by any police officer during reasonable business hours without the necessity of a warrant (§301.225(2)).

If investigating a motor vehicle theft, a law enforcement agency may require a motor vehicle insurer to divulge all relevant information and evidence pertaining to the investigation (§301.227(8)). The insurance company has reciprocal rights to information upon the termination of a criminal prosecution.

Examples:

1. Bill has just received his electric bill. It's \$200.00 for just one month. Bill is enraged. He decides to cut down the electric company's wires to the police station, which he does. Bill is guilty of tampering in the first degree.
2. Tom owns a junkyard. Because demand for used car parts has risen so dramatically, Tom has enlisted his brother to strip cars and sell him what he gets. Both Tom and his brother are guilty of tampering in the first degree.
3. Jane watches Mr. Zane drive up in his new Camaro. She notices that Mr. Zane threw his keys on the floor of the car. After Mr. Zane leaves, Jane runs to the car, gets in, finds the keys and decides to take a quick ride around the block. She plans on returning the car before Mr. Zane notices it's missing. Jane is guilty of tampering in the first degree.

Cross References:

Purpose
Deprive
Of another

Related Offenses:

Stealing	¶9.3
Tampering, second degree	¶8.14

8.14 Tampering in the Second Degree (§569.090)
Penalty Varies (See Below)

Elements:

A person commits the offense of tampering in the second degree if (s)he:

1. a. tampers with property
b. of another
c. for the purpose of causing substantial inconvenience to that person or to another; OR
2. a. unlawfully rides in or upon
b. another's automobile, motorcycle, motorboat, or other motor-propelled vehicle; OR
3. a. tampers with or causes to be tampered with

- b. any meter or other property of an electric, gas, or steam, or water utility;
- c. the effect of which is either
 - (1) to prevent the proper measuring of electric, gas, steam, or water services; OR
 - (2) to permit the diversion of any electric, gas, steam, or water service.

Penalty:

Tampering in the second degree is a class A misdemeanor unless:

- 1. The defendant has a prior violation of tampering in the second degree by tampering with any meter or other property of an electric, gas, steam or water utility in which case tampering second degree is a E felony; OR
- 2. The defendant has a prior finding of guilty to stealing a motor vehicle, water craft or aircraft, receiving stolen property or tampering in the second degree by unlawfully riding in or on another's motor propelled vehicle, in which case tampering second degree is a class D felony.

Comments:

If the accused person or persons receive a direct benefit from the meter or other utility property, proof of tampering will give rise to an inference which the trier of fact may accept as sufficient proof of guilt.

Joyriding passengers are in violation of this section, whereas the unlawful driver is guilty of tampering in the first degree under the preceding section.

Examples:

- 1. Steve and Bob ask Greg if he wants to ride in Evan Smith's new racing boat. Greg knows they don't have Smith's permission but figures Smith will never find out. He agrees; the three race down to the docks and since Steve gets there first, he gets to drive. Bob and Greg are guilty of tampering in the second degree while Steve is guilty of tampering in the first degree.
- 2. Bill asks his friend, an electrician, to rewire the electric lines so that the electric meter can be bypassed by pulling a switch. Both have committed the offense of tampering in the second degree. **Note** that Bill could also be convicted of stealing the electricity.

8.15 Tampering with Computer Data (§569.095)

Penalty Varies (See Below)

Elements:

A person commits the offense of tampering with computer data if (s)he:

1. knowingly and without authorization; OR
2. knowingly and without reasonable grounds to believe that (s)he had authorization;
 - a. modifies or destroys data or programs residing or existing internal to a computer, computer system, or computer network; OR
 - b. modifies or destroys programs or supporting documentation residing or existing external to a computer, computer system, or computer network; OR
 - c. discloses or takes data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; OR
 - d. discloses or takes a password, identifying code, personal identification number, or other confidential information about a computer system or network;
 - e. accesses a computer, a computer system or computer network and intentionally examines information about another person;
 - f. receives, retains, uses, or discloses any data (s)he knows or believes was obtained in violation of the law.

Penalty:

1. Class A misdemeanor unless;
2. committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is \$750 or more, then a class E felony.

Comments:

This section covers the sabotage or theft of data stored in the computer. The two succeeding sections cover tampering with the computer itself.

Example:

Jones, an employee of a bank, without authorization, alters the input data to instruct the computer to write unauthorized checks to his fiancée. Jones is guilty of tampering with computer data.

Cross References (See Definitions):

Knowingly

Intellectual property
Computer
Computer system
Computer network

Related Offenses:

Stealing	¶9.3
Tampering with computer equipment	¶8.16
Tampering with computer users	¶8.17

8.16 Tampering with Computer Equipment (§569.097)
Penalty Varies (See Below)

Elements:

A person commits the offense of tampering with computer equipment if (s)he:

1. knowingly and without authorization; OR
2. knowingly and without reasonable grounds to believe that (s)he has such authorization:
 - a. modifies, destroys, damages, or takes equipment or data storage devices used or intended to be used in a computer, computer system, or computer network; OR
 - b. modifies, destroys, damages, or takes any computer, computer system, or computer network.

Penalty:

1. If no intent to defraud or any property obtained is less than \$750.00, a class A misdemeanor.
2. If an offense is committed with the purpose to defraud or obtain any property worth \$750.00 or more, a class E felony.
3. If the damage to such computer network is \$750.00 or more but less than \$25,000, a class E felony.
4. If the damage to such equipment etc., is \$25,000.00 or greater, then a class D felony.

Comments:

This section is designed to deal with the theft or destruction of the physical computer equipment as opposed to the theft or destruction of information stored in the computer covered by the preceding section. With the rapid increase in the purchase of home computers, this section will be applicable to the home burglar.

Cross Reference:

Computer
Computer system
Computer network
Knowingly

Related Offenses:

Causing catastrophe	¶8.12
Tampering with computer data	¶8.15
Tampering with computer users	¶8.17
Property damage	¶8.27

8.17 Tampering with Computer Users (§569.099)

Penalty Varies (See Below)

Elements:

A person commits the offense of tampering with computer users if (s)he:

1. knowingly and without authorization; OR
2. knowingly and without reasonable grounds to believe (s)he has authorization:
 - a. accesses or causes to be accessed any computer, computer system, or computer network; OR

- b. denies or causes the denial of computer system services to an authorized user of such computer system services, which in whole or in part, is owned by, under contract to, or operated for, or on behalf of, or in conjunction with another.

Penalty:

1. Class A misdemeanor unless;
2. committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the value of which is \$750.00 or more, then a class E felony.

Comments:

This section is designed to deal with the unauthorized use of computer related facilities or the prevention of use of a computer to one who is authorized. This section was probably not designed to cover an employee who (without authorization) uses an employer's computer to play games or to balance personal checkbooks.

Cross References:

Knowingly
Access
Computer
Computer system
Computer network

Related Offenses:

Tampering with computer data	¶8.15
Tampering with computer equipment	¶8.16
Trespass	¶8.31

8.18 Alteration or Removal of Item Numbers (§570.085)

Penalty Varies (See Below)

Elements:

A person commits the offense of alteration or removal of item numbers if with the purpose of depriving the owner of a lawful interest therein (s)he:

1. a. destroys, removes, covers, conceals, alters, defaces, OR
- b. causes to be destroyed, removed, covered, concealed, altered, or defaced

- c. the manufacturer's original serial number or other distinguishing owner-applied number or mark; OR
2. sells, offers for sale, pawns, or uses as security for a loan, any item which has been so changed; OR
3. buys, receives as security for a loan or in pawn, or in any manner receives or has in his/her possession any item which has been so changed as described above.

Penalty:

1. If the value of the item or items in the aggregate is \$750.00 or more, a class E felony; OR
2. if the value of the item or items in the aggregate is less than \$750.00, a class B misdemeanor.

Examples:

1. Donald recently purchased an electric typewriter for \$50.00. He suspected that the property was stolen so Donald pried off the manufacturer's serial number plate on the back. He also asked his friend Roscoe to use an engraver to remove the serial numbers from the chassis of the typewriter. Donald has violated part "one" of this section by removing *and* causing to be destroyed the manufacturer's serial numbers. Roscoe is also guilty under this section.
2. Donald owns a bicycle and, in refinishing the bicycle, has removed the bicycle's serial number identification plate and painted over the engraved serial number concealing it. Donald is not guilty under this section because his purpose was not to deprive an owner of a lawful interest in the property.
3. Donald buys a cassette player from a pawn shop. He notices that the serial number on the back has been scratched so it is illegible but does not know that the cassette player was stolen. Donald is not guilty of violating this section because he does not have the intent to permanently deprive the actual owner of the cassette player.

Cross Reference:

Defacing firearm

**8.19 Alteration, Removal, or Concealment of Identification Numbers
from Motor Vehicle Parts, Farm Machinery, Construction Equipment
Prohibited (§301.400)****Class D Felony****Elements:**

A defendant violates this section if, for any reason, (s)he:

1. removes, covers, alters, defaces; OR
2. causes to be destroyed, removed, covered, altered, or defaced
3. the manufacturer's number, the motor number, or other distinguishing number
4. on any motor vehicle tire or parts, piece of farm machinery, farm implement or piece of construction equipment, which is the property of another.

Comments:

Strict controls have been placed on businesses that deal in dismantled and wrecked cars in an attempt to cut down on automobile theft. Any person who purchases or sells four or more vehicles a year must be licensed by the Department of Revenue (§301.218) to legally: sell used motor vehicle parts, wreck or dismantle vehicles for resale of parts, rebuild wrecked or dismantled vehicles, or to possess scrapped vehicles. Only persons obtaining the license may legally attend salvage disposal sales of wrecked vehicles. The license holder who purchases at a sale must apply for a salvage certificate of title for vehicles seven years old or newer. Every license holder must maintain a three-year record of every vehicle identification number and every wrecked vehicle purchased, sold, dismantled, or disposed of. Such records may be inspected by any police officer during reasonable business hours without the necessity of a warrant (§301.255(2)).

If investigating a motor vehicle theft, a law enforcement agency may require a motor vehicle insurer to divulge all relevant information and evidence pertaining to the investigation (§301.227(8)). The insurance company has reciprocal rights to information upon the termination of a criminal prosecution.

Example:

Donald has possession of a set of stolen "off the road" vehicle tires. Donald sells the tires to Bud's Tire Co. after advising Bud, the owner of the company, that the tires were stolen and that the identification numbers should be removed from the tires. Bud uses a buffer to remove the manufacturer's identification numbers from

the sidewall of the tires. In this case the actual owner of the tires could not have been traced from the numbers. Donald is guilty under this section for causing the manufacturer's number to be removed. Bud is guilty of removing the numbers since he knew that Donald was not the rightful owner. It does not matter that the purpose of the numbers was for another reason other than owner identification.

8.20 Possession of Property Which Has its Original Manufacturer's Number Altered, Defaced, Removed, etc. (§301.390)

Class E Felony

Elements:

A person violates this section if (s)he:

1. a. sells, or offers for sale, or knowingly has the custody or possession
b. of a motor vehicle, trailer, motor vehicle tires, piece of farm
machinery, farm implement, or piece of construction equipment
c. on which the original manufacturer's number or other distinguishing
number has been destroyed, removed, covered, altered, or defaced;
OR
2. a. sells, offers for sale, or knowingly has the custody or possession
b. of a motor vehicle or trailer
c. which has no manufacturer's number or other original number or
distinguishing number.

Comments:

Every police officer who has knowledge of property as described above which has had its original manufacturer's number or other distinguishing number removed, covered, altered, destroyed, or defaced, and for which no special number has been issued:

1. shall immediately seize, take possession of such property; AND
2. arrest the supposed owner or custodian, thereof; AND
3. cause prosecution to be begun in a court of competent jurisdiction.

Example:

Steve just purchased a new Corvette sports car for one half of its actual market value. Steve knows that the manufacturer's serial number on the door plates and engine parts have all been altered but does not know whether the car is actually stolen. An officer pulls Steve over for speeding in the sports car. Steve is guilty of violating this section in knowingly having possession of the vehicle with an altered serial number. The officer should impound the car after arresting Steve. (See Comments)

Cross References:

Claim of right
Knowingly
Purpose
Of another

Related Offenses:

Tampering, second degree ¶8.14

8.21 Odometer Fraud**Introduction:**

With the aim of eliminating the altering or resetting of mileage recorders (odometers) on motor vehicles, any law enforcement officer has the authority (without the necessity of a warrant) to inspect the documents of any person or agent licensed or registered as a manufacturer or dealer under Chapter 301.

Licensed or registered dealers or manufacturers may have their license suspended or revoked for violations of an odometer fraud offense. Triple the amount of actual damages are also recoverable in a civil suit.

The attempt to commit (§407.542) or conspiracy to commit (§407.543) odometer fraud in the first or second degree outlined below is a class C misdemeanor.

Any person convicted of an odometer fraud offense who is a repeat offender under this section is guilty of a class E felony.

**8.22 Odometer Fraud in the First Degree (§407.516)
Class A Misdemeanor****Elements:**

A defendant is guilty under this section if (s)he:

1. installs a device which causes an odometer to register any mileage other than the true mileage; OR
2. sells or advertises for sale a vehicle in which such device has been installed.

8.23 Odometer Fraud in the Second Degree (§407.521)

Class E Felony

A defendant is guilty under this section if (s)he:

1. disconnects, resets, or alters the odometer of any motor vehicle
2. with the intent to alter the actual number of miles indicated thereon
3. with the intent to defraud.

NOTE: The disconnecting, altering, or resetting of an odometer constitutes prima facie evidence of intent to defraud.

8.24 Odometer Fraud in the Third Degree (§407.526)

Class C Misdemeanor

Elements:

A defendant is guilty under this section if (s)he:

1. operates a motor vehicle less than twenty years old
2. on any public street or highway
3. knowing that the odometer is disconnected or not functioning
4. with the intent to defraud.

8.25 Defacing, Obscuring, or Falsifying an Odometer Reading on a Document (§407.536(6))

Class E Felony

Elements:

A defendant is guilty under this section if (s)he:

1. defaces, obscures, or otherwise falsifies
2. any odometer reading; OR
3. any affidavit or document required by the Department of Revenue.

8.26 Removal or Alteration of Notice of Repaired or Replaced Odometer Prohibited (§407.531(3))

Infraction

Elements:

A defendant is guilty under this section if (s)he:

1. removes or alters
2. the Department of Revenue required notice
3. that the motor vehicle's odometer has been repaired or replaced.

NOTE: If a repaired or replaced odometer is not capable of registering the same mileage as before the repair or replacement then a notice in writing must be attached to the left door frame of the vehicle. The notice must state the date of repair or replacement and the actual mileage on that date (§407.531.2).

8.27 Property Damage Offenses (§569.100-§569.120)

Introduction

The two forms of property damage prohibit knowingly damaging property of another and damaging property for the purpose of defrauding an insured. Whether the offense of property damage is in the first or second degree depends on the monetary extent of the damages.

Property is "of another" if another person or entity has a possessory or proprietary interest in it. If the property was damaged in order to get insurance money, the state must show that the defendant acted with a purpose to defraud an insurer. "To defraud" means to deprive someone of property by deceit, cheating, or trickery.

8.28 Property Damage in the First Degree (§569.100) Penalty Varies (See Below)

Elements:

A person commits the offense of property damage in the first degree if (s)he:

1. a. knowingly damages property
b. of another; AND
c. the damage exceeds \$750.00; OR
2. a. knowingly damages property
b. with the purpose to defraud an insurer; AND
c. the damage exceeds \$750.00;
OR
3. a. knowingly damages a motor vehicle AND
b. damage occurs:
 - a. while such person is making entry into the motor vehicle for the purpose of committing the offense of stealing therein,
OR
 - b. damage occurs while such person is committing the offense of stealing within the motor vehicle

Penalty:

Property damage in the first degree committed under subdivision (1) or (2) above is a class E felony, unless the offense of property damage in the first degree was committed under subdivision (1) above and the victim was intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which case it is a class D felony.

The offense of property damage in the first degree committed under subdivision (3) above is a class D felony unless committed as a second or subsequent violation of subdivision (3) above in which case it is a class B felony.

Comments:

Note that the difference between the degrees of property damage (for part one) is the dollar amount of damage done, not the value of the property.

If the suspect damages property for the purpose of defrauding an insurer, it is not necessary for a conviction to show that the insurer parted with any money because of the suspect's actions. The property damaged need not belong to the suspect.

Examples:

1. Donald knowingly shoots and kills his neighbor's prize breeding bull, valued at \$8,000.00. Donald is guilty of property damage in the first degree. If he had shot the bull accidentally, Donald would not be guilty of this offense.
2. Donald owns a new car, which is insured for \$10,000.00. He decides that he would like to have the insurance money so he drives the car off a cliff, totally destroying it, and files an insurance claim. Donald is guilty of property damage in the first degree.

8.29 Property Damage in the Second Degree (§569.120)**Penalty Varies (See Below)****Elements:**

A person commits the offense of property damage in the second degree if (s)he:

1. a. knowingly damages property
- b. of another; OR
2. a. damages property

- b. with the purpose to defraud an insurer.

Penalty:

Property damage in the second degree is a class B misdemeanor, unless the offense of property damage in the second degree was committed under subdivision (1) above and the victim was intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which it is a class A misdemeanor.

Examples:

1. Johnny is in a hell-raising mood one night. He drives out into the country and sees an abandoned farm outhouse which has only aesthetic and sentimental value. Johnny pushes the outhouse down and breaks it apart. Johnny is guilty of property damage second degree.
2. Donald is mad at his neighbor and drives his automobile through his neighbor's yard, mowing down an apple tree. The neighbor says the apple tree is "priceless" and cannot put a value on it. A landscape specialist says a replacement tree will cost \$100.00. Donald is guilty of property damage in the second degree.

8.30 Claim of Right (§569.130)**Elements:**

A person does not commit an offense by damaging, tampering with, riding in or upon, or making connection with property of another if (s)he:

1. does so under a claim of right; AND
2. has reasonable grounds to believe (s)he has such a right.

Comments:

This section provides a defense to charges of damaging or tampering with property of another. "Claim of right" is not defined here, but §570.070 says that a person acts under a claim of right if, at the time of the alleged offense, (s)he acted in an honest belief that (s)he had a right to do the act, or acted in the honest belief that the owner, if present, would have consented to the act. This belief must be reasonable. The defense is not available to a defendant who damages his own property for the purpose of defrauding an insurer.

Example:

Bob often allows Fred to borrow Bob's car. One day, Fred needs to drive his wife to the doctor's office for treatment. Bob is not home, but Fred borrows his car, feeling certain that Bob would allow him to use it under the circumstances. Bob later discovers that his car is missing, and notifies the police. The police arrest Fred and charge him with tampering. Fred probably has a defense under this section, since he acted under the belief that Bob would have allowed him to use the car. The fact that Bob allowed him to use the car in the past is evidence that Fred's belief was reasonable.

8.31 Trespass

The offense of trespass is divided into two degrees-trespass in the first degree and trespass in the second degree. The basic offense is trespass in the second degree, which merely requires an unlawful entry onto another's real property and no culpable mental state is required.

8.32 Trespass in the First Degree (§569.140)**Class B Misdemeanor****Elements:**

A person commits the offense of trespass in the first degree if (s)he:

1. knowingly enters unlawfully or knowingly remains unlawfully
2. in a building or inhabitable structure; OR
3. upon real property if
 - a. the property is fenced or otherwise enclosed in a manner designed to exclude intruders; OR
 - b. notice against trespass is given by
 - i. actual communications to the suspect; OR
 - ii. posting in a manner reasonably likely to come to the attention of intruders.

Penalty:

Trespass in the first degree is a class B misdemeanor, unless the victim is intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer, in which case it is a class A misdemeanor. If the building or real property is part of a nuclear power plant, the offense of trespass in the first degree is a class E felony.

Comments:

Unlike second degree trespass, trespass in the first degree is a more serious offense that requires a "culpable mental state." This means the defendant must **know (s)he is entering or remaining unlawfully.** In other words, the individual must be aware of the facts that make his/her entry or remaining unlawful. For example, if the person honestly believed (s)he was still on property where he was authorized to be, but in fact was not, (s)he would not be guilty of trespass in the first degree.

First degree trespass will be committed when the individual knowingly enters or remains unlawfully in a building or inhabitable structure. However, if the property is something other than a building or inhabitable structure, it is not trespass in the first degree unless the individual knows (s)he has no right to be there and either the property is fenced in a manner designed to exclude intruders or the individual is given notice against trespass. Notice against trespass may be provided either by actually telling the individual or by posting a notice in a reasonable manner.

Examples:

1. The defendant climbs over a tall security fence at a military installation to distribute political leaflets to the soldiers. Because the land is fenced in a manner designed to exclude intruders, and the defendant knew he was not authorized to enter, he has committed first degree trespass.
2. Donald is hunting on John's land. John sees Donald and tells him that he is to leave the premises immediately because John does not allow hunting on his property. Donald ignores John, and continues to hunt. Donald has committed first degree trespass because he knows he is remaining on real property without permission, and he has received actual notice against trespass.
3. John has large signs posted which say no trespassing, and the signs are placed every 30 yards around his one-acre pond. David, who is a stranger to John and has no permission to swim there, goes swimming in John's pond. David has probably committed first degree trespass.
4. David is a student at a university. When the Dean's office is temporarily vacant, he goes in and chains the door shut. David defies repeated orders from the Dean, his staff, and the police to unchain the door and leave the building. Because David has remained unlawfully in a building, he has committed first degree trespass.

Cross References:

Knowingly
Inhabitable structure

Enter unlawfully or remain unlawfully
Property of another

8.33 Trespass in the Second Degree (§569.150)
An Infraction

Elements:

A person commits the offense of trespass in the second degree if (s)he:

1. enters unlawfully upon
2. real property
3. of another.

Comments:

This is an offense of strict liability, although it is a very minor offense. No culpable mental state is necessary and only an unlawful entry onto another's real property is required. This means that even if the defendant reasonably and honestly believed (s)he has license or privilege to enter real property, when in fact (s)he did not, (s)he would commit trespass in the second degree since there is no requirement of culpability. In other words, the state need not show the defendant was aware (or should have been aware) that the real property was of another or that the defendant was aware of such facts as would constitute lack of license or privilege to enter onto the premises.

Examples:

1. Bob, who likes to hunt, obtains Joe's permission to hunt on Joe's ranch. However, since there are no fences, Bob miscalculates the boundaries of Joe's land and inadvertently enters Harry's property. Even though Bob honestly and reasonably believed he was still on Joe's property, since he has no license or privilege to be on Harry's land, Bob has committed an offense of trespass in the second degree.
2. A grocery store with a parking area is open for business hours from 8:00 a.m. until 6:00 p.m. On his way to school at 9:00 a.m., Donald walks across the store's lot since this provides a shorter route to school. Because at the time of his entry the lot was open to the public, Donald has not entered unlawfully and has not committed trespass.

Cross References:

Enters unlawfully

Infractions

Property of another

8.34 Burglary and Related Offenses

Introduction

The Code makes some significant changes in the offense of burglary and breaks it into two offenses. Burglary in the second degree is the basic offense, and it becomes burglary in the first degree if certain aggravating circumstances are present.

The offense of burglary does not require "breaking" as an element of the offense. The act of burglary is entering "unlawfully or remaining unlawfully." See definition at (§569.010(2)). Any entry, however slight, by any part of a person's body, or under certain circumstances, intrusion by instruments, is sufficient to establish an "entry" (See example #4 under Burglary in the Second Degree).

Under the Code:

A person "enters unlawfully or remains unlawfully" in or upon a building or inhabitable structure when (s)he is not licensed to do so. Opening an unlocked or partially open door to gain access to premises, if done without the owner's permission, is an unlawful entry.

A person, who enters or remains in or upon a building or inhabitable structure which is at the time open to the public does so with license and privilege unless (s)he defies a lawful order not to enter or remain. A license or privilege to enter or remain in a building which is only partly open to the public is not license or privilege to enter or remain in that part of the building which is not open to the public.

The defendant must know that (s)he is entering or remaining unlawfully. This means that if the defendant honestly believes the building is open to the public, even if it is not open, (s)he does not have the mental state required for burglary. This will, of course, in nearly every case, be a jury issue.

The words "building or inhabitable structure" include a vehicle, vessel or structure:

1. where any person lives or carries on business or other calling; OR
2. where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; OR
3. which is used for overnight accommodation of persons. Any such vehicle or structure is "inhabitable" regardless of whether a person is actually present.

If the defendant is an occupant of an apartment or hotel room, the other apartment or hotel rooms are "inhabitable structures" of another and the defendant commits the offense of burglary if (s)he knowingly enters unlawfully the apartment or hotel room of another for the purpose of committing an offense therein.

If the defendant intends to commit any offense while in the building or inhabitable structure, (s)he is guilty of burglary. (S)He need not actually commit an offense inside; all that is required is that (s)he **have the intent** to commit an offense. The pre-Code burglary statutes required an intent to commit a felony as an element of the offense of burglary. There need not be an intent to commit a felony under the Code.

Cross Reference:

Knowingly
Inhabitable structure
Enter unlawfully or remain unlawfully

8.35 Burglary in the Second Degree (§569.170)
Class D Felony

Elements:

A person commits the offense of burglary in the second degree if (s)he:

1. knowingly enters unlawfully or knowingly remains unlawfully
2. in a building or inhabitable structure
3. for the purpose of committing an offense therein.

Comments:

See the introductory comments in ¶8.34.

Examples:

1. Donald enters a department store during business hours with the intent of shoplifting merchandise. He has not committed burglary because, despite his unlawful purpose, he has not entered unlawfully because the building was open to the public.
2. Donald enters a department store with the intent of stealing money. He goes into the manager's office which is a separate room in the back of the building. He has committed burglary because even though the building was open to the public, the manager's office was not. His entry into that portion of the building was unlawful and is sufficient for burglary. In fact,

this might be first degree burglary because others are present in the structure. See the previous section for a discussion of first degree burglary.

3. Donald goes into a department store during business hours. Intending to steal, he hides behind a counter and waits until after the store has closed for the day and then comes out to steal. He has committed burglary by remaining in a building until such time as it was no longer open to the public, for the purpose of committing an offense.
4. Donald's screwdriver protruded into victim's apartment about one and one-half inches while the screwdriver was being used to attempt to open the back door. Donald never entered the apartment. The instrument's protrusion was not sufficient to establish an "entry" occurred. Under some circumstances, intrusion of a tool or instrument is sufficient to establish an "entry." Any entry, by any part of a person's body, is sufficient for an "entry."

8.36 Burglary in the First Degree (§569.160)**Class B Felony****Elements:**

A person commits burglary in the first degree if (s)he:

1. knowingly enters unlawfully or knowingly remains unlawfully
2. in a building or inhabitable structure
3. for the purpose of committing an offense therein; AND
4. while inside or entering the structure or while fleeing from it, (s)he or another participant in the burglary:
 - a. is armed with explosives or a deadly weapon; OR
 - b. injures or threatens injury to any person who is not a participant in the burglary; OR
 - c. someone who is not a participant in the burglary is present in the structure.

Comments:

Burglary in the first degree consists of second degree burglary plus certain aggravating circumstances. (See the introductory comments and the definitions under "Burglary in the Second Degree.")

Examples:

1. Douglas, armed with a deadly weapon (a gun), enters a department store during business hours with the intent of shoplifting. He has not committed either first or second degree burglary because, despite his unlawful purpose, the building was open to the public.
2. Donald, armed with a deadly weapon (a gun), enters a department store with the intent of stealing money. He goes into the manager's office which is a separate room in the back of the building. He has committed first degree burglary because even though the building was open to the public, the manager's office was not and his entry into that portion was unlawful. Since he was armed, the offense is first degree burglary.
3. Donald goes into a department store during business hours. He hides behind a counter, waiting until the store has closed for the day so that he can steal property. The store closes, but a janitor is present in the building. Donald has committed first degree burglary because, with the intent to commit an offense, he remained in a building until such time as it was no longer open to the public, and a person who was not a participant in the burglary was present in the structure.

Cross References:

Knowingly
Inhabitable structure
Enter or remain unlawfully

8.37 Possession of Burglar's Tools (§569.180)
Class E Felony

Elements:

A person commits the offense of possession of burglar's tools if (s)he:

1. possesses
2. any tool, instrument, or other article
3. which is adapted, designed, or commonly used
4. for committing or facilitating offenses involving forcible entry into premises; AND
5. (s)he has a purpose to use such tools; OR
6. (s)he has knowledge that
 - a. some other person has

- b. the purpose of using the tools
- 7. in making an unlawful forcible entry into a building, or an inhabitable structure, or room thereof.

Comments:

This section replaces the pre-Code statute found in §560.155. The pre-Code statute makes an effort to list the instruments prescribed.

The Code avoids the obvious problem of excluding a possible burglar's tool by using a more encompassing phrase of "any tool, instrument, or other article."

Possession of the tool, instrument, or article in issue must (of course) be shown. This offense also requires a showing that the instrument is adapted, designed, or commonly used for committing or facilitating offenses involving forcible entry into premises. If the instrument is not so adapted, designed, or commonly used, possession of the item will not be an offense under §569.180 regardless of what the defendant's purpose or knowledge may be respecting the instrument.

The mere possession of such tools, however, will not support a conviction based on this statute. It must also be shown beyond a reasonable doubt that the person possessed the instrument with the purpose to use, or knowledge that another would use the tools, to commit an offense involving forcible entry into premises. Proof of general intent to use instruments for burglaries, as required to support conviction for possession of burglar's tools is normally by evidence presented about the reputation for burglary and the intended use of such tools in them. It does not relate to a particular time or place but only to unlawful purpose. There is no need to prove burglary to prove unlawful possession of burglar tools.

Example:

Donald is standing in an alley behind a store late at night. A squad car arrives and the officers see Donald. The officers see a crowbar, false key, lock pick, and a force screw near where Donald is standing, and Donald has no reasonable explanation for his being in the alley. Under such circumstances, Donald has probably committed possession of burglar's tools. (See general comments at ¶8.34.)

Cross References:

Enter unlawfully
Inhabitable structure
Knowingly & Purposely

Chapter 9

Stealing and Related Offenses

(Chapter §570.010)

9.1 Introduction

This chapter deals with various offenses against property. The basic offense is stealing. Related offenses are forgery, bad check and credit card offenses, and various offenses dealing with fraud in a commercial situation.

The stealing provision in the Revised Criminal Code contains the “four strikes” provision as part of the penalty section in the basic stealing offense. Also, the separate offense of receiving stolen property has been **repealed** and the prohibited conduct consolidated with the general stealing statute.

9.2 Determination of Value (§570.020)

Whether a particular offense against property is a felony or a misdemeanor often depends on the value of the property involved. Normally the value of the property will be its market value, or if that cannot be satisfactorily determined, its replacement cost. If the victim is a merchant, and the property is a type that the merchant sells in the ordinary course of business, then the property shall be valued at the price that such merchant would normally sell such property. Instruments such as checks and promissory notes are valued at the amount that is due on the instrument, which in the case of checks will usually be the amount of the check. When the value cannot be determined above, its value shall be deemed to be less than \$750.

9.3 Stealing (§570.030)

Penalty Varies (See Below)

Elements:

A person commits the offense of stealing if (s)he:

1. appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion; OR

2. attempts to appropriate anhydrous ammonia or liquid nitrogen of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion; OR
3. for the purpose of depriving the owner of a lawful interest therein, receives, retains, or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

Penalty / Value or Specified Types of Property:

1. **Class A Felony** – any of the following containing any amount of anhydrous ammonia: a tank truck, tank trailer, rail tank car, bulk storage tank, field nurse, field tank or field applicator.
2. **Class B Felony** – (1) any amount of anhydrous ammonia or liquid nitrogen; or (2) any animal considered livestock (144.010) or any captive wildlife held under permit issued by Conservation Commission (*value of animal or animals exceeds \$3000.00 and the person has previously been found guilty of stealing livestock or captive wildlife held under permit*); or (3) motor vehicle, watercraft, or aircraft (*and the person has previously been found guilty of two-stealing-related offenses committed on two separate occasions where such offenses occurred within ten years of the date of the present offense*); or (4) any animal considered livestock (144.010) (*and the value of the livestock exceeds \$10,000.00*); or (5) property owned by or in the custody of a financial institution and the property is taken or attempted to be taken physically from an individual person to deprive the owner or custodian of the property.
3. **Class C Felony** – the value of property or services is \$25,000.00 or more.
4. **Class D Felony** – (1) the value of property or services is \$750.00 or more; or (2) the offender physically takes the property from the person of the victim; or (3) the property consists of: any motor vehicle, watercraft or aircraft; any will or unrecorded deed affecting real property; any credit device, debit device or letter of credit; any firearms; any explosive device (571.010); any United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; any original copy of an act, bill or resolution, introduced or acted upon by the General Assembly; any pleading, notice, judgment, or any other record or entry of any court of this state, and any other state or of the United States; any book or registration or list of voters required by Chapter 115; any animal considered livestock (144.010); any live fish raised for commercial sale

(value of \$75.00 or more); any captive wildlife held under permit issued by the Conservation Commission; any controlled substance (195.010); ammonium nitrate; any wire, electrical transformer, or metallic wire associated with transmitting telecommunications, video, internet, or voice over internet protocol service, or any other device or pipe that is associated with conducting electricity or transporting natural gas or other combustible fuels; or any material appropriated with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogs.

5. **Class E Felony** – (1) if stolen property is an animal; or (2) if a person has previously been found guilty of three stealing-related offenses committed on three separate occasions where such offenses occurred within ten years of the date of occurrence of the present offense.
6. **Class A Misdemeanor** – no other penalty is specified in this section.
7. **Class D Misdemeanor** – the property is not listed in paragraph 1, 2, 4, or 5 (excludes property associated with class C felony above), property has a value of less than \$150.00 and the person has no previous findings of guilt for a stealing-related offense.
8. The appropriation of any property or services of a type listed in paragraphs 1, 2, 4, and 5 above or of a value of seven hundred fifty dollars or more may be considered a separate felony and may be charged in separate counts.
9. The value of property or services appropriated pursuant to one scheme or course of conduct, whether from the same or several owners and whether at the same or different times, constitutes a single criminal episode and may be aggregated in determining the grade of the offense, except as set forth in paragraph 8 above.

Felony Threshold Amounts:

Under the Revised Criminal Code, where harmonization is the goal, the standard felony threshold value will be \$750.00 for:

- Tampering with computer data (§569.095);
- Tampering with computer equipment (§569.097);
- Tampering with computer users (§569.099);
- Property damage first degree (§569.100);
- Prohibited acts involving crops (§569.132);
- Default (§570.020);
- Stealing (§570.030);

- Stealing leased or rented property (570.057);
- Alteration or removal of item numbers (570.085);
- Counterfeiting (570.103);
- Passing bad checks (570.120);
- Fraudulently stopping payment of an instrument (570.125);
- Defrauding secured creditors (570.180);
- Identify theft (570.223)
- Unlawfully receiving public assistance benefits or EBT cards (570.400);
- Unlawful conversion of public assistance benefits or EBT cards (570.402);
- Unlawful transfer of public assistance benefits or EBT cards (570.404);
- Perjury for the purpose of obtaining public assistance (570.408);
- Institutional vandalism (574.085); or
- Prohibited acts against animal research and production facilities (578.405).

Note: one notable exception is the offense of financial exploitation of an elderly person or person with a disability (570.145), where the amount threshold amount of **\$50.00** remains.

Cross References:

Appropriate
"Purpose to deprive"
Deceit
Coercion
Consent
Of another
Property
Services

9.4 Lost Property (§570.060)

A finder of property does not commit the offense of stealing by appropriating lost property if under the circumstances:

1. he does not know the identity of the owner; AND
2. he does not have means of inquiry as to the identity of the owner.

Thus, a finder who appropriates lost property will be guilty of stealing the property if (s)he knows who the owner is or there is available means of determining the owner.

Examples:

1. Donald finds a \$10.00 bill on the sidewalk. He has no idea who the owner may be. He takes the money and spends it. He has not committed stealing.
2. Donald sees Harry drop a \$10.00 bill while getting change at a bar. Donald says nothing but picks up the bill and later spends it. Donald is guilty of stealing because he knew the owner of the money.
3. Donald finds a wallet on the sidewalk. The wallet contains \$50.00 in cash and a driver's license. If Donald takes the money and makes no attempt to contact the person named on the driver's license, he will have committed stealing.

9.5 Claim of Right (§570.070)

A person does not commit the offense of stealing if at the time of appropriation, (s)he acted in the honest belief that:

1. (s)he had a right to appropriate the property; OR
2. that the owner, if present, would have consented to the appropriation.

One does not steal property if (s)he honestly believes it is his/her own property and (s)he has a right to take it, or if (s)he honestly believes (s)he is dealing with the property in a manner in which the owner would have agreed. **Note** that such mistaken belief does not have to be reasonable; it just must be honestly held.

Examples:

1. After having dinner in a restaurant, Donald picks up Harry's coat, mistakenly believing it is his own coat, and leaves the restaurant. Although Donald has appropriated Harry's coat without Harry's knowledge and consent, he has not committed stealing since he honestly believed it was his own coat.
2. David steals a car. He tells Sam that he bought the car and lets Sam take it for a drive. Sam is arrested while driving the stolen car. Sam is not guilty of stealing the car if he honestly believed the owner of the car had consented to his driving it. (**Note** that for tampering, claim of right, can also be a defense but it must be based on reasonable grounds).

**9.6 Forgery (§570.090)
Class D Felony****Elements:**

A person commits the offense of forgery if:

1. a. (s)he has a purpose to defraud and (s)he
b. makes, completes, alters, or authenticates

- c. any writing
- d. so that it purports to have been made:
 - i. by another person
 - ii. at another time or place
 - iii. in a numbered sequence other than the actual sequence
 - iv. with different terms
 - v. or by authority of one who in fact did not give such authority; OR
- 2. a. with a purpose to defraud (s)he
 - b. erases, obliterates, or destroys
 - c. any writings; OR
- 3. a. with a purpose to defraud (s)he
 - b. makes or alters
 - c. anything other than a writing
 - d. so that it purports to have a genuineness, antiquity, rarity, ownership, or authorship which it does not possess; OR
- 4. a. with a purpose to defraud (s)he
 - b. i. uses as genuine; OR
 - ii. possesses for the purpose of using as genuine; OR
 - iii. transfers with the knowledge or belief that it will be used as genuine
 - c. any writing or other thing, including receipts and universal product codes, which the actor knows has been made or altered as described in this section.

Comments:

This section is basically the same as the pre-Code forgery statute. It covers the making or altering of anything to appear to have attributes which it does not have, and requires a purpose to defraud.

Possession of, and attempt to pass, a forged instrument raises a presumption that the person in possession forged it.

9.7 Possession of a Forging Instrumentality (§570.100)
Class D Felony**Elements:**

A person commits the offense of possession of a forging instrumentality if (s)he:

- 1. a. makes; OR
 - b. causes to be made; OR
 - c. possesses
- 2. any plate, mold, instrument, or device for making or altering

3. any writing or anything other than a writing
4. with the purpose of committing forgery.

Cross References:

Purpose
Forgery

9.8 Counterfeiting (§570.103)
Penalty Varies (See Below)

Elements:

A person commits the offense of counterfeiting if (s)he:

1. willfully
2. a. manufactures; OR
b. uses; OR
c. displays; OR
d. advertises; OR
e. distributes; OR
f. offers for sale; OR
g. sells; OR
h. possesses with intent to sell or distribute
3. any item, or services
4. bearing or identified by a counterfeit mark.

Penalty:

Counterfeiting is a class A misdemeanor. However, when the defendant has previously been convicted of counterfeiting, or when the violation involves more than one hundred but fewer than one thousand items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is seven hundred fifty dollars or more, counterfeiting is a class E felony. Counterfeiting is a class D felony under the following circumstances: (1) the defendant has previously been convicted of two or more counterfeiting offenses; (2) the violation involves the manufacture or production of items bearing counterfeit marks; or (3) the violation involves one thousand or more items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is twenty-five thousand dollars or more.

Comments:

This section was enacted to address the problem of the unauthorized use of trademarks or trade names. For example, one who manufactures or sells blue jeans and labels them Calvin Kline jeans without proper authorization, is guilty of violating this section. A **counterfeit mark** is defined as any unauthorized reproduction or copy of intellectual property or intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property. **Intellectual property** is defined as any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify such person's goods or services. The statute also provides that a person having possession of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to sell or distribute them.

9.9 Passing Bad Checks (§570.120)

Penalty Varies (See Below)

Elements:

A person commits the offense of passing a bad check if:

1. with the purpose to defraud
2. (s)he makes, issues, or passes a check or any other form of presentment involving the transmission of account information for the payment of money
3. Knowing:
 - a. it will not be paid by the drawee; OR
 - b. that there is no such drawee; OR
4. (s)he makes, issues, or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money
5. Knowing:
 - a. that there are insufficient funds in or on deposit with that account for the payment of such check or other form of presentment involving the transmission of account information in full and all other checks or other forms of presentment involving the transmission of account information upon such funds then outstanding; OR
 - b. that there is no such account or no drawee; AND
 - c. fails to pay the check or other form of presentment within ten days after receiving actual notice in writing that it has not been

paid because of insufficient funds or credit with the drawee or because there is no such drawee.

Penalty:

Passing a bad check is either a class A misdemeanor or a class E felony. To receive a felony, one of the following must occur:

1. The face amount of the check or other form of presentment or the aggregated amounts is \$750.00 or more. The face amounts of any bad checks passed pursuant to one course of conduct within any ten-day period may be aggregated to reach the \$750.00 amount for the felony penalty; OR
2. the person making the presentment had no account with the drawee; OR
3. there is no drawee bank.

Comments:

This section covers insufficient funds checks (payment refused because not enough funds on deposit to cover the check), no account checks (person making the check has no account with the drawee bank) and bogus checks (where the bank named on the check is fictitious and does not exist). **Note** that passing a no account or bogus check is a felony without regard to the amount of the check. Passing an insufficient funds check is a misdemeanor unless the amount is \$750.00 or more.

The offense of passing a bad check requires the purpose to defraud and knowledge that the check will not be paid or that there is no drawee bank. Issuing a no account or bogus check is *prima facie* evidence of the purpose to defraud and also of knowledge that it will not be paid.

NOTE: If a person passing a bad check has had his/her bank account garnished after writing the check, this intervening factor ordinarily removes him/her from criminal liability on the bad check.

Examples:

1. Donald writes ten checks, each with a face value of \$100.00, on an account in which he knows he has only \$20.00. He cashes these checks at different stores during a three-day period, planning to leave town shortly thereafter. The passing of each check would be a **class A misdemeanor**, but the face

amount of all ten checks can be added together to support conviction of a **class E felony**.

2. Donald writes a check for \$25.00 on the "East Bank of Mississippi" knowing there is no such bank, and uses the check to buy groceries. Donald is guilty of the felony of passing a bogus check.

Cross Reference:

Purpose
Knowledge

9.10 Fraudulently Stopping Payment of an Instrument (§570.125)

Penalty Varies (See Below)

Elements:

A person commits the offense of fraudulently stopping payment of an instrument if (s)he:

1. knowingly, and with the purpose to defraud,
2. stops payment on a check or sight draft
3. given in payment for the receipt of goods or services.

Penalty:

1. Class A misdemeanor if the face amount of the check is under \$750.00.
2. Class E felony if the face amount of the check is \$750.00 or more or if a stop payment is made on more than one check in the same course of conduct, the aggregate amount of which is \$750.00 or more.

Comments:

This section covers an incident where a person writes a check against a valid account where there are sufficient funds, but stops payment on the check after having received the goods or services. This section gives the victim the assistance of the criminal system (where previously) civil redress was the only method, albeit ineffective.

The offense of fraudulently stopping payment of an instrument requires the purpose to defraud. This may be shown by the issuer failing to make good the check within ten days after notice in writing from the payee is received that the check or draft has not been paid due to a stop payment order by the issuer. Written notice should be sent by certified mail to the last known address of the issuer and contain a statement that failure to make good the check or draft within ten days of receipt may subject the issuer to criminal prosecution.

9.11 Fraudulent Use of a Credit Device or Debit Device (§570.130)
Penalty Varies (See Below)

Elements:

A person commits the offense of fraudulent use of a credit device or debit device if (s)he:

1. uses a credit device or debit device
2. for the purpose of obtaining services or property
3. knowing that
 - a. the device is stolen, fictitious, or forged; OR
 - b. the device has been revoked or canceled; OR
 - c. for any other reason, his/her use of the device is unauthorized.

Penalty:

Fraudulent use of a credit device or debit device is a class A misdemeanor unless the value of services or property obtained by using the credit device or debit device amounts to \$750.00 or more **during a 30-day period**, in which case, the offense is a **class E felony**.

Comments:

A "credit device" includes a writing, card, code, number or other device purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

A "debit device" includes a writing, card, code, number or other device, other than a check, draft or similar paper instrument, by the use of which a person may initiate an electronic fund transfer, including but not limited to devices that enable electronic transfers of benefits to public assistance recipients

Cross Reference:

Purpose
Knowing
Credit device
Debit device

9.12 Fraudulent Procurement of a Credit or Debit Card (§570.135)
Class A Misdemeanor

Elements:

A person commits the offense of fraudulent procurement of a credit or debit card if (s)he:

1. a. knowingly
b. makes or causes to be made directly or indirectly
c. a false statement regarding another person
d. for the purpose of fraudulently procuring the issuance of a credit or debit card; OR
2. a. knowingly
b. obtains a means of identification of another person
c. without the authorization of that person, and
d. uses that means of identification fraudulently to obtain or attempt to obtain credit, goods, or services in the name of another person
e. without the consent of that person; OR
3. knowingly possesses a fraudulently obtained credit or debit device

Definitions:

“Means of identification” is anything used by a person as a means to uniquely distinguish himself or herself.

Note: The statute further provides that any business accepting applications for credit or debit cards, or any business accepting such cards for a business transaction, shall not be liable under this section absent clear and convincing evidence that such business conspired with or was part of the fraudulent procurement of such card.

9.13 Deceptive Business Practice (§570.140)**Class A Misdemeanor****Elements:**

A person commits the offense of deceptive business practice if:

1. in the course of engaging in a business, occupation, or profession
2. (s)he recklessly:
 - a. uses, or possesses for use, a false weight or measure, or any device for falsely determining or recording any quality or quantity; OR
 - b. sells, offers, or exposes for sale, or delivers less than the represented quantity of any commodity or services; OR
 - c. takes or attempts to take more than the represented quantity of any commodity or service when, as a buyer, (s)he furnishes the weight or measure; OR
 - d. sells, offers, or exposes for sale adulterated or mislabeled commodities; OR

- e. makes a false or misleading written statement for the purpose of obtaining property or credit; OR
- f. promotes the sale of property or services by a false or misleading statement in any advertisement; OR
- g. advertises in any manner the sale of property or services with the purpose not to sell or provide the property or services
 - i. at the price which s/he offered them, or
 - ii. in the quantity sufficient to meet the reasonably expected public demand, unless the quantity is specifically stated in the ad, or
 - iii. at all

Comments:

The offense of deceptive business practices covers a variety of misconduct that can occur in a business setting. It covers such things as short weighing and short counting, selling adulterated or mislabeled goods, and making false written statements to obtain property or credit. **Note:** that the mental state required is recklessness. The individual need not actually know (s)he is using false weights, etc. If (s)he consciously disregarded a substantial risk that what (s)he was doing is prohibited by this section, that is a sufficient mental state.

Cross References:

Purpose
Reckless
Adulterated
Mislabeled

9.14 Financial Exploitation of the Elderly and Disabled (§570.145)
Penalty Varies (See Below)**Elements:**

A person commits the offense of financial exploitation of an elderly or disabled person if they:

1. Knowingly
2. obtains control over the elderly or disabled person's property with the intent to permanently deprive them of the use, benefit, or possession of that property thereby benefitting themselves, or detrimentally affecting the elderly or disabled person, by:
 - a. Deceit
 - b. Coercion
 - c. Creating or confirming another person's impression which is false and which the offender does not believe to be true; or

- d. Failure to correct a false impression which the offender previously has created or confirmed; or
- e. Preventing another person from acquiring information pertinent to the disposition of the property involved; or
- f. Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or
- g. Promising performance which the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not sufficient evidence to prove that the offender did not intend to perform; or
- h. Undue influence, which means the use of influence by someone who exercises authority over an elderly person or person with a disability in order to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony. Undue influence includes, but is not limited to, the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.

Penalty:

Financial exploitation of an elderly or disabled person is a **Class A misdemeanor** if the value of the property is less than fifty dollars. It is a **Class E felony** if the value of the property is fifty dollars but less than seven hundred fifty dollars. It is a **Class D felony** if the value of the property is seven hundred fifty dollars but less than five thousand dollars. It is a **Class C felony** if the value of the property is five thousand dollars but less than twenty-five thousand dollars. It is a **Class B felony** if the value of the property is twenty-five thousand dollars but less than seventy-five thousand dollars. It is a **Class A felony** if the value of the property is seventy-five thousand dollars or more.

Definitions:

Deceit or deceive – making a representation which is false and which the actor does not believe to be true and upon which the victim relies, as to a matter of fact, law, value, intention or other state of mind, or concealing a material fact as to the terms of a contract or agreement. The term "deceit" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. Deception as to the actor's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

Disabled person – a person with a mental, physical, or developmental impairment that substantially limits one or more major life activities or the ability to provide adequately for one's care or protection, whether such impairment is verified by medical findings.

Elderly person – a person sixty years of age or older.

9.15 Commercial Bribery (§570.150)**Class A Misdemeanor****Elements:**

A person commits the offense of commercial bribery if (s)he:

1.
 - a. solicits, accepts, or agrees to accept
 - b. any benefit
 - c. in return for knowingly violating or agreeing to violate
 - d. a duty of fidelity which (s)he owes as:
 - i. an agent or employee of another;
 - ii. a trustee, guardian, or other fiduciary;
 - iii. a lawyer, physician, accountant, appraiser, or other professional adviser or informant;
 - iv. an officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; OR AS
 - v. an arbitrator or other purportedly disinterested adjudicator or referee;
2.
 - a. if (s)he holds himself/herself out to the public as one engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services; AND
 - b. solicits, accepts, or agrees to accept
 - c. any benefit to influence his/her selection, appraisal, or criticism;
3. if (s)he offers or confers or agrees to confer any benefit which it would be an offense to accept under 1 and 2 above.

Comments:

This section generally addresses bribery in the business context. It prohibits giving and offering, as well as agreeing to accept bribes, for knowingly violating duties of loyalty owed to persons or associations. The bribe can consist of "any benefit," and is not restricted to money or property.

Cross References:

Knowingly

9.16 Defrauding Secured Creditors (§570.180)
Penalty Varies (See Below)

Elements:

A person commits the offense of defrauding secured creditors if (s)he:

1. destroys, removes, conceals, encumbers, transfers, or otherwise deals with
2. property subject to a security interest
3. with a purpose to defraud the holder of the security interest.

Comments:

A security interest is the right of a creditor to take possession of specific property of the debtor if the debtor fails to pay the debt the specific property is "securing." Automobiles and appliances are often sold on this basis where the automobile or appliance is "security" for the payment of the purchase price plus interest. This section makes it an offense for a person to dispose of or otherwise deal with the property for the purpose of defrauding the creditor. It replaces pre-Code §561.570.

Penalty:

Defrauding secured creditors is a class A misdemeanor unless the amount remaining on the secured debt (including interest) is \$750.00 or more, in which case it is a class E felony.

Cross References:

Purpose

9.17 Library Theft (§570.210)
Penalty Varies (See Below)**Elements:**

A person commits the offense of library theft – and thereby is guilty of stealing under §570.030 – if that person with the purpose to deprive:

1. a. knowingly removes
b. any library materials
c. from the premises of a library
d. without authorization; OR
2. a. borrows or attempts to borrow
b. any library material
c. from a library
d. by the unauthorized use of a library card; OR
3. a. borrows library material
b. from any library
c. pursuant to an agreement established by the library requiring the return of such library material; AND
d. fails to return the library material to the library; OR
4. knowingly writes on, injures, defaces, tears, cuts, mutilates, or destroys a book, document, or other library material belonging to, on loan to, or otherwise in the custody of a library.

Comments:

Prima facie evidence of criminal intent is established if the library sends notice by certified mail demanding the return of the library material and the defendant, without good cause, fails to return the library material within ten days. Receipt of the notice is presumed if mailed to the last address provided to the library by such person. An agent or employee may detain any person reasonably suspected of violating this provision for the purpose of investigating whether there has been, or may be a wrongful taking, of library material. The statute thus gives a library employee the police powers of detaining someone on probable cause even when that person did not personally witness an offense.

Penalty:

The offense of library theft is punishable pursuant to the penalty provisions under §570.030.

Examples:

1. Dewey uses Dessy's library card without permission to check out a library book, having forgotten his own card. The book is returned but overdue. There is not an offense if Dewey did not intend to permanently deprive the library of the book.
2. A student borrows library books for vacation reading. The books are overdue two months while the student is on vacation. A ten-day notice is mailed while the student is away on vacation. There is a rebuttable presumption that the student has committed library theft.

9.18 Facilitating the Theft of Cable Television (§570.300)

Class D Felony

Elements:

A person commits the offense of theft of cable television if (s)he:

1. Knowingly
2. sells, uses, manufactures, rents or offers for sale, rental, or use
3. any device, plan, or kit designed and intended to obtain cable television
4. without paying all lawful compensations to the operator of service.

Comments:

Satellite receiving dishes and video cassette recorders, for personal use only, are not prohibited. Microwave television transmissions requiring special equipment for reception other than conventional television receivers are covered by this section.

Example:

Bundy, a local tavern owner installs a satellite dish to show sports programming to his patrons. The programming is restricted for reception through a local cable television operator for a fee. Bundy does not pay a fee for the programming received. Since the television programming was not for personal use the offense of theft of cable television has occurred.

9.19 Failure to Return Leased Property (§570.057)
Class A Misdemeanor or Class C Felony

Elements:

A person commits the offense of failure to return leased property if (s)he with the intent to deprive the owner thereof:

1. **purposefully** fails to return leased or rented personal property to the place, within the time specified in a written agreement; OR
2. the person who has leased or rented the property
 - a. conceals the property from the owner, or
 - b. sells, encumbers, conveys, pawns, loans, abandons, or gives away the property without the consent of the lessor or without informing the person to whom the property is transferred to that it is subject to a lease; OR
3. returns the property to the lessor without paying the lease charges agreed upon in the written instrument.

Comments:

There is sufficient evidence to establish the defendant's intent and guilt under this section if the lessor sends a letter of written demand for the return of the goods to the defendant lessee and the defendant fails to return the leased or rented personal property **to its owner at the owner's place of business** within seven days. The written demand must state that failure to return the property may subject the person to criminal prosecution and the letter must be sent by certified or registered mail. **Note** that such letter need not be sent for the defendant to be guilty, but such letter will get the case to the jury in most instances. This law applies to all forms of leasing and rental agreements, including but not limited to, contracts which provide the customer options to buy the leased or rented personal property, lease-purchase agreements, and rent-to-own contracts. Leasing contracts which provide options to buy merchandise are owned by the owner of the property until such time as the owner endorses the sale and transfer of ownership of the leased property to the lessee.

As of July 1, 1992, the law was amended concerning the leasing or renting of motor vehicles. If the motor vehicle has not been returned within seventy-two hours after the expiration of the lease or rental agreement, such failure to return the motor vehicle shall be "prima facie" evidence of the intent of Failure to Return Leased Property. After seventy-two hours the lessor may notify the local law enforcement agency of the failure to return the motor vehicle; when notified the law enforcement agency shall put the information into the computer system listing stolen vehicles. Any officer upon stopping such motor vehicle may seize the

vehicle and notify the lessor that it may be recovered after it is photographed and the VIN number recorded for evidence.

Penalty:

Failure to return leased property is a class A misdemeanor unless the property involved has a value of \$750.00 or more, in which case, it is a class D felony.

Example:

Donald leases a sandblaster from Leisure Lessors to refinish his automobile. Donald did not give any identification to the lessor when he rented the sandblaster so he decides to try and keep it. Six months has passed since the time specified in the agreement for the return of the equipment. Donald is guilty of failing to return leased property. That the lessor never made a written demand for the sandblaster does not absolve Donald from guilt. The long period of possession may establish Donald's criminal intent.

Cross References:

Deprive

Related Offenses:

Stealing ¶9.3

9.20 Feigned Blindness (§570.053)**Class A Misdemeanor****Elements:**

A person commits the offense of feigned blindness if (s)he:

1. pretends to be blind
2. for the purpose of obtaining something of value
3. from another
4. by deceit.

Comments:

This offense is a lesser included offense of stealing but the appropriation of property or services need not be accomplished to be guilty under this section. False representation of blindness satisfies the element of deceit. An example of this offense would be a street vendor feigning blindness to receive contributions.

9.21 Time Share and Merchandising Offenses

Introduction:

Time share (part-time ownership) fraud remains a problem. The following provisions were enacted to protect potential victims from unscrupulous time share promoters and others who perpetrate merchandising fraud.

9.22 Unlawful Practices (Merchandising Fraud) (§407.020)

Class E Felony

Elements:

A person commits the offense of unlawful practices if (s)he:

1. willfully and knowingly
 - a. sells or advertises any merchandise in trade or commerce in or from the state of Missouri
 - b. with the act, use, or employment of any deception, fraud, false pretense, false promise, misrepresentation, or unfair practice
 - c. with the intent to defraud; OR
2. willfully and knowingly
 - a. sells or advertises any merchandise in trade or commerce in or from the state of Missouri; AND
 - b. conceals, suppresses or omits any material fact
 - c. with intent that others rely upon such concealment; OR
3. willfully and knowingly
 - a. refuses to provide copies of documents which reflect the facility's evaluation of the quality of care, and
 - b. is a long-term care facility, and
 - c. makes, either orally or in writing representation to residents, prospective residents, their families or representatives regarding the quality of care provided, or systems or methods utilized for assurance or maintenance of standards of care

Comments:

This enactment makes fraudulent merchandising practices a criminal offense, for which prior to the enactment, only a civil action to recover damages was possible.

To constitute a criminal offense under this section a willful and knowing intent to defraud is required.

A fraudulent act under this section is an offense whether committed before, during, or after the sale or advertisement. Thus, fraud need not have been relied on if there was intent to defraud. This section does not apply to the owner, publisher, or broadcaster of advertised material through publications, radio, or television who has no knowledge of the intent, design, or purpose of the advertiser.

A victim of fraudulent merchandising activities may be informed that an independent civil action may be maintained to recover actual and punitive damages. Any evidence of fraudulent merchandising activity may be conveyed to the Attorney General's office who is empowered to investigate such unlawful activity.

Example:

Sunny places an ad for solar home heaters in the local newspaper. These solar home heaters are actually fake panels placed on the home that Sunny knows does nothing to supply heat. One of the panels is sold to a local homeowner. Sunny has committed two felonies: the fraudulent advertisement, and sale, of the solar heater based on false information are separate violations. Note that a violation occurs even if there is no actual reliance on a false advertisement or deceptive sale.

Related Offenses:

Deceptive business practice ¶9.13

9.23 Time Share Fraud (§407.600 -§407.630)
Class A Misdemeanor

Elements:

A person commits time share fraud if (s)he:

1. uses a promotional device, sweepstake, gift award, premium, discount, drawing, or display booth
2. without disclosing that the promotional device is being used for the purpose of soliciting sales of time share periods.

Comments:

A seller of timeshare programs must file with the Attorney General a copy of any promotional program material used in connection with the sale of time share plans at least 14 days prior to the release of the materials to the public. Failure of the seller to obtain the prior approval of the Attorney General is punishable under this section. There are many disclosure requirements imposed on the seller, the purposeful omission of which is a criminal offense under this section. One such disclosure requirement to the purchaser of a time-share plan or time-share property is that they have five days after the day of purchase to cancel the purchase. Any complaints regarding time-share promoters should be forwarded to the Attorney General's Office.

Definitions:

Time-share period-when a purchaser of a time-share plan is entitled to the possession and use of the facilities of a time-share plan.

Time-share plan-a purchaser, in exchange for a consideration, receives ownership rights to use accommodations for a period of time which is less than a full year (during any given year) and which extends for a period of more than three years.

9.24 Lien Fraud (§429.014)
Penalty Varies (See Below)

Elements:

Any original contractor, subcontractor, or supplier commits lien fraud when (s)he:

1. fails or refuses to pay any subcontractor, material man, supplier, or laborer for any services or material provided pursuant to any contract
2. for which services or material the original contractor, subcontractor, or supplier was paid
3. with the intent to defraud.

Penalty:

Lien fraud is a class D felony if the amount of the lien, or if the aggregate of all liens filed on the subject property, is in excess of \$500.00. Otherwise, lien fraud is a class A misdemeanor. If no liens are filed, lien fraud is a class A misdemeanor.

Comments:

This section is intended to provide criminal punishment for contractors, subcontractors, or suppliers who receive funds from a consumer but who then fail to pay for the services or supplies for which the payment is being made.

Example:

Alice hired Joe Builder to construct a new addition to her house. He gave her a bill for \$20,000.00 and she paid him. He then failed to pay for the materials and services used in building the addition so the subcontractors and suppliers filed mechanics liens against Alice's house. Joe Builder used the money for other purposes and has no money now to satisfy the liens. He is guilty of lien fraud.

9.25 Evidence in Property Offense Cases (\$490.717)

In any prosecution for wrongful taking, photographs of the personal property alleged to have been wrongfully taken, shall be deemed competent evidence of such personal property and shall be admissible in a proceeding, hearing or trial of the case to the same extent as if such property had been introduced as evidence. In addition to the personal property, such photographs shall clearly depict the owner, agent, or representative of the mercantile establishment of the owner of the property and a sign and placard stating the date and time at which the photograph was taken and the name of the establishment or owner of the property. Such photographs shall be accompanied by the following written (documents) **affidavit** signed (under oath) by the arresting police officer **or security officer**:

1. a written description of the personal property alleged to have been taken, including the retail price of the property and, if available, the manufacturer's number, the style, the color, and size of the property;
2. the name and address of the mercantile establishment wherein the alleged wrongful taking occurred, or the name and address of the owner of the property;
3. the name, address, and signature of the owner, agent, or representative of such mercantile establishment or owner of the property;
4. the name and badge or other identification number of the arresting officer and a sample of his/her signature indicating the date of signing; AND
5. the name and address of the photographer and the date and time that the photographer signed the photograph.
6. Upon the filing of the photograph and documents referred to above, the property shall be returned to the mercantile establishment wherein the wrongful taking took place, or to the owner of the property.

7. "Wrongful taking" means any offense involving stealing or forcibly stealing -- including the offenses of robbery, burglary, stealing, tampering, and property damage.
8. **At any preliminary hearing, a notarized affidavit from the buyer or the purchasing department of any retail business stating the value or cost of an item belonging to or possessed by the business shall be received into evidence on the issue of the value in any case where value is an element of the offense being charged.** Note--An affidavit received under this section may not be substituted for actual testimony at the time of the trial.

Comment:

This section provides a way to accommodate a victim's interest in the prompt return of his property. Law enforcement officials also welcome the change as it provides a means for clearing storerooms of stolen property. If the procedures set forth are followed, photographs of the property are admissible in court and the photographs will be sufficient to establish the proof of what was taken from the victim. **This section shall not be construed to make inadmissible any evidence, including photographs, which would otherwise be admissible under the laws of this state or under common law.**

**9.26 Identity Theft (§570.223)
Penalty Varies (See Below)**

A person commits the offense of identity theft if (s)he:

1. knowingly and with the intent to deceive or defraud
2. obtains, possesses, transfers, uses, or attempts to obtain, transfer or use,
3. one or more means of identification not lawfully issued for his/her use.

Penalty:

1. ID theft or attempted ID theft which does not result in the theft or appropriation of credit, property or services is a class B misdemeanor;
2. ID theft which results in the theft or appropriation of credit, property or services not exceeding seven hundred fifty dollars in value is a class A misdemeanor;
3. ID theft which results in the theft or appropriation of credit, money, goods, services or other property exceeding seven hundred fifty dollars but not exceeding **twenty-five** thousand dollars in value is a class D felony;
4. ID theft which results in the theft or appropriation of credit, money, goods, services or other property exceeding **twenty-five** thousand dollars but not exceeding seventy-five thousand dollars in value is a class C felony;

5. ID theft which results in the theft or appropriation of credit, money, goods, services or other property exceeding **seventy-five** thousand dollars in value is a class B felony;
6. Any defendant who has previously pled guilty to or been found guilty of an ID theft or attempted ID theft and who subsequently pleads guilty to ID theft or attempted ID theft of credit, property or services not exceeding seven hundred fifty dollars in value is guilty of a class E felony.

Comments:

This section is intended to provide special protection against identity theft, that is, using or possessing the identification of another (name, driver's license number, social security number, etc...) to commit some sort of fraudulent scheme. An example of such a scheme would be using another's identification to obtain a credit card account in the other's name, or opening up a bank account in another's name and writing bad checks on such account.

9.27 Trafficking in Stolen Identities (§570.224)
Class B Felony**Elements:**

1. A person commits the offense of trafficking in stolen identities when such defendant manufactures, sells, transfers, purchases, or possesses, with intent to sell or transfer means of identification for the purpose of committing identity theft.
2. Possession of five or more means of identification of the same person or possession of means of identification of five or more separate persons shall be evidence that the identities are possessed with intent to commit this offense.

9.28 Manufacturing or Possessing Fictitious or Forged Identifications (§570.380)
Class D Felony**Elements:**

A person commits the offense of manufacturing or possessing fictitious or forged identification if (s)he:

1. Manufacturers or possesses five or more fictitious or forged means of identification (as defined in §570.010),
2. With the intent to distribute them to others for the purpose of committing an offense.

9.29 Filing False Documents (§570.095)**Penalty Varies (See Below)****Elements:**

A person commits the offense of filing false documents if (s)he:

1. With the intent to defraud, deceive, harass, alarm, or negatively impact financially, or in such a manner reasonably calculated to deceive, defraud, harass, alarm, or negatively impact financially
2. Files, causes to be filed or recorded, or attempts to file or record, creates, uses as genuine, transfers or has transferred, presents, or prepares with knowledge or belief that it will be filed, presented, recorded, or transferred to
3. The secretary of state or the secretary's designee, the recorder of deeds of any county or city not within a county or the recorder's designee, any municipal, county, district, or state government entity, division, agency, or office, or to any credit bureau or financial institution any of the following types of documents:
 - a. Common law lien;
 - b. Uniform commercial code filing or record;
 - c. Real property recording;
 - d. Financing statement;
 - e. Contract;
 - f. Warranty, special, or quitclaim deed;
 - g. Quiet title claim or action;
 - h. Deed in lieu of foreclosure;
 - i. Legal affidavit;
 - j. Legal process;
 - k. Legal summons;
 - l. Bills and due bills;
 - m. Criminal charging documents or materially false criminal charging documents;
 - n. Any other document not stated in this subdivision that is related to real property; or
 - o. Any state, county, district, federal, municipal, credit bureau, or financial institution form or document; **AND**
4. Such document listed above contains materially false information; is fraudulent; is a forgery, as defined under §570.090 (Forgery); lacks the

consent of all parties listed in a document that requires mutual consent; or is invalid under Missouri law.

Penalty:

Filing false documents under this section is a class D felony for the first offense. The penalty becomes a class C felony if the following circumstances apply:

1. The defendant has been previously found guilty or pleaded guilty to a violation of this section;
2. The victim or named party in the matter:
 - a. Is an official elected to municipal, county, district, federal, or statewide office;
 - b. Is an official appointed to municipal, county, district, federal, or statewide office; or
 - c. Is an employee of an official elected or appointed to municipal, county, district, federal, or statewide office;
3. The victim or named party in the matter is a judge or magistrate of:
 - a. Any court or division of the court in this or any other state or an employee thereof; or
 - b. Any court system of the United States or is an employee thereof;
4. The victim or named party in the matter is a full-time, part-time, or reserve or auxiliary peace officer, as defined under §590.010, who is licensed in this state or any other state;
5. The victim or named party in the matter is a full-time, part-time, or volunteer firefighter in this state or any other state;
6. The victim or named party in the matter is an officer of federal job class 1811 who is empowered to enforce United States laws;
7. The victim or named party in the matter is a law enforcement officer of the United States as defined under 5 U.S.C. § 8401(17)(A) or (D);
8. The victim or named party in the matter is an employee of any law enforcement or legal prosecution agency in this state, any other state, or the United States;
9. The victim or named party in the matter is an employee of a federal agency that has agents or officers of job class 1811 who are empowered to enforce United States laws or is an employee of a federal agency that has law enforcement officers as defined under 5 U.S.C. § 8401(17)(A) or (D); or
10. The victim or named party in the matter is an officer of the railroad police as defined under §388.600.

Penalty Note:

For a penalty enhancement as described above to apply, the occupation of the victim or named party shall be material to the subject matter of the document or documents filed or the relief sought by the document or documents filed, and the occupation of the victim or named party shall be materially connected to the apparent reason that the victim has been named, victimized, or involved. For purposes of the penalty section, a person who has retired or resigned from any agency, institution, or occupation listed above shall be considered the same as a person who remains in employment. The penalty enhancement shall also include the following family members of a person listed under subdivisions (2) to (9) as listed above:

- (1) Such person's spouse;
- (2) Such person or such person's spouse's ancestor or descendant by blood or adoption; or
- (3) Such person's stepchild while the marriage creating that relationship exists.

Note:

There are other procedural and investigative matters contained within §570.095 and an investigator or officer assigned should confer with their prosecutor for more information.

Cross Reference:

Forgery

9.30 Vehicle Hijacking (§570.027)

Penalty Varies

Elements:

A person commits the offense of vehicle hijacking if (s)he:

1. Knowingly uses or threatens the use of physical force
2. Upon another person
3. To seize or attempt to seize possession or control of
4. A vehicle
5. From the immediate possession or control of another person

Penalty:

The base penalty for vehicle hijacking is a class B felony. If the person or another participant in the offense commits one of the following aggravating factors the offense will be a class A felony:

1. Causes serious physical injury to any person in immediate possession, control, or presence of the vehicle;
2. Is armed with a deadly weapon;
3. Uses or threatens the immediate use of a dangerous instrument against any person;
4. Displays or threatens the use of what appears to be a deadly weapon or dangerous instrument; or
5. Seizes a vehicle, or attempts to seize a vehicle, in which a child or special victim as defined in §565.002 is present.

Chapter 10

Armed Criminal Action and Weapons Offenses

(Chapter 571)

10.1 Introduction

10.1 Second Amendment Preservation Act (§§1.410-1.450)

The “Second Amendment Preservation Act” prohibits any entity or person, including any public officer or employee of this state or any political subdivision of this state, from enforcing or attempting to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances that “infringe on the right to keep and bear arms” as the phrase is described in §1.420. The law provides for civil penalties against any political subdivision or law enforcement agency that employs a person who violates this provision or who provides “material aid and support to the efforts of another” who is violating this provision.

A full discussion about this Act is beyond the scope of this Handbook, and specific guidance about its implications should be sought from competent legal counsel. In general, Missouri officers should only enforce Missouri state firearms laws and officers should not take any action based on a known or suspected violation of federal firearms laws, orders, or regulations. This includes making any stop or arrest, or undertaking any other search or seizure.

10.2 Definitions (§571.010)

“Antique, curio or relic firearm” means any firearm so defined by the National Gun Control Act, 18 U.S.C. 26 § 5845, and the United States Treasury/Bureau of Alcohol Tobacco and Firearms, 27 CFR § 178.11:

“Antique firearms” is any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, said ammunition not being manufactured any longer; this includes any matchlock, wheel lock, flintlock, percussion cap or similar type ignition system, or replica thereof;

"Curio or relic firearm" is any firearm deriving value as a collectible weapon due to its unique design, ignition system, operation or at least fifty years old, associated with a historical event, renown personage or major war;

"Blackjack" means any instrument that is designed or adapted for the purpose of stunning or inflicting physical injury by striking a person, and which is readily capable of lethal use;

"Blasting Agent" means any material or mixture consisting of fuel and oxidizer that is intended for blasting, but not otherwise defined as an explosive under this section, provided that the finished product, as mixed for use of shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined;

"Concealable firearm" means any firearm with a barrel less than sixteen inches in length, measured from the face of the bolt or standing breech;

"Deface" means to alter or destroy the manufacturer's or importer's serial number or any other distinguishing number or identification mark;

"Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive, including but not limited to, electric blasting caps or instantaneous and delay types, non-electric blasting caps for use with safety fuse or shock tube and detonating-cord delay connectors;

"Explosive weapon" means any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury, or substantial property damage; or any device designed or adapted for delivering or shooting such a weapon. The term "explosive" means any chemical compound mixture or device, the primary or common purpose of which is to function by explosion, including but not limited to, dynamite and other high explosives, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cords, igniter cords, and igniters or blasting agents;

"Firearm" means any weapon that is designed or adapted to expel a projectile by the action of an explosive;

"Firearm silencer" means any instrument, attachment, or appliance that is designed or adapted to muffle the noise made by the firing of any firearm;

"Gas gun" means any gas ejection device, weapon, cartridge, container or contrivance other than a gas bomb, that is designed or adapted for the purpose of ejecting any poison gas that will cause death or serious physical injury, but not any device that ejects a repellent or temporary incapacitating substance;

"Intoxicated" means substantially impaired mental or physical capacity resulting from introduction of any substance into the body;

"Knife" means any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person. For purposes of this Chapter 571, "knife" does not include any ordinary pocketknife with no blade more than four inches in length;

"Knuckles" means any instrument that consists of finger rings or guards made of a hard substance that is designed or adapted for the purpose of inflicting serious physical injury or death by striking a person with a fist enclosed in the knuckles;

"Machine gun" means any firearm that is capable of firing more than one shot automatically, without manual reloading, by a single function of the trigger;

"Projectile weapon" means any bow, crossbow, pellet gun, slingshot or other weapon that is not a firearm, which is capable of expelling a projectile that could inflict serious physical injury or death by striking or piercing a person;

"Rifle" means any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger;

"Short barrel" means a barrel length of less than sixteen inches for a rifle and eighteen inches for a shotgun, both measured from the face of the bolt or standing breech, or an overall rifle or shotgun length of less than twenty-six inches;

"Shotgun" means any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire a number of shot or a single projectile through a smooth bore barrel by a single function of the trigger;

"Spring gun" means any fused, timed or non-manually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious physical injury or death;

"Switchblade knife" means any knife which has a blade that folds or closes into the handle or sheath, and

- a) That opens automatically by pressure applied to a button or other device located on the handle; or
- b) That opens or releases from the handle or sheath by the force of gravity or by the application of centrifugal force

10.3 Possession, Manufacture, Transport, Repair, or Sale of Certain Weapons Prohibited (§571.020)

Penalty Varies (See Below)

Elements:

A person commits this offense if (s)he knowingly possesses, manufactures, transports, repairs, or sells:

1. an explosive weapon;
2. an explosive, incendiary or poison substance or material with the purpose of possessing, manufacturing or selling an explosive weapon;
3. a gas gun;
4. a bullet or projectile which explodes or detonates upon impact because of an independent explosive charge; OR
5. knuckles; OR
6. any of the following in violation of federal law:
 - a. a machine gun;
 - b. a short-barreled rifle or shotgun;
 - c. a firearm silencer;

- d. a switchblade knife.

Note:

A person does not commit the above offense if his or her conduct involved any of the items in subdivisions (1) to (5) of subsection 1, the item was possessed in conformity with any applicable federal law, and the conduct:

- a. Was incident to the performance of official duty by the Armed Forces, National Guard, a governmental law enforcement agency, or a penal institution; or
- b. Was incident to engaging in a lawful commercial or business transaction with an organization enumerated in subdivision (1) of this section; or
- c. Was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or
- d. Was incident to displaying the weapon in a public museum or exhibition; or
- e. Was incident to using the weapon in a manner reasonably related to a lawful dramatic performance.

Penalty:

A violation of (1), (2), (3), or (6) is a class D felony. A violation of (4) or (5) is a class A misdemeanor.

Definition:

Explosive Weapon-Any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury, or substantial property damage; or any device designed or adapted for delivering or shooting such a weapon. The term "explosive" means any chemical compound mixture or device, the primary or common purpose of which is to function by explosion, including but not limited to, dynamite and other high explosives, pellet power, initiating explosives, detonators, safety fuses, squibs, detonating cords, igniter cords, and igniters or blasting agents.

Cross Reference:

Knowingly

Related Offenses:

Unlawful use of weapons	¶10.5
Unlawful transfer of weapons	¶10.8
Transfer of concealable firearms	¶10.11

10.4 Armed Criminal Action (§571.015)

Penalty Varies (See Below)

Elements:

A person commits the offense of armed criminal action if:

1. (s)he commits any felony
2. by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon.

Penalty:

First offense -- not less than three years and not more than fifteen years of imprisonment. If the person was unlawfully possessing a firearm, then the term will be not less than five years.

Second offense -- not less than five years and not more than thirty years imprisonment. If the person was unlawfully possessing a firearm, then the term will be not less than fifteen years.

Third offense -- not less than ten years imprisonment. If the person was unlawfully possessing a firearm, then the term will be not less than fifteen years.

Comments:

This section provides for aggravation of the penalty for people who use dangerous instruments or deadly weapons in the commission of felonies. It creates an offense separate and distinct from the other offense. Thus, an individual may be charged with both armed criminal action and the underlying felony. The U.S. Supreme Court upheld the constitutionality of this statute allowing the imposition of punishment for the underlying felony and the imposition of an additional sentence for the use of a deadly weapon. *Missouri v. Hunter*, 459 U.S. 359 (1982).

This section does not apply to people who are armed while only committing a misdemeanor.

This statute also provides aggravated punishment for the repeat offender. The aggravation "peaks" at the third conviction, where the offender who is convicted three or more times for armed criminal action, receives a minimum mandatory sentence of ten years. The statute provides that the punishment under this section

is in addition to and consecutive to any punishment provided for the underlying felony.

The statute states that the minimum sentences which may be imposed for a conviction under this section are to run **without interruption** by probation, parole, conditional release, or suspended imposition or execution of sentence for a period equal to the minimum number of years provided for in the section.

10.5 Unlawful Use of Weapons (§571.030)

Penalty Varies (See Below)

Elements:

A person commits the offense of unlawful use of weapons, except as otherwise provided by §§571.101-571.121, if (s)he knowingly:

1. a. carries a knife, firearm, blackjack, or any other weapon readily capable of lethal use
b. concealed
c. upon or about his/her person
d. into any area where firearms are restricted under §571.107; OR
2. sets a spring gun; OR
3. a. discharges or shoots a firearm
b. into a dwelling house, a railroad train, boat, aircraft, any building or structure used for the assembling of people or any motor vehicle (as defined by §302.010); OR
4. a. exhibits
b. in the presence of one or more persons
c. any weapon readily capable of lethal use
d. in an angry or threatening manner; OR
5. a. handles or uses a firearm or projectile weapon,
b. in either a negligent or unlawful manner; OR
c. discharges such firearm; AND
d. while intoxicated (unless acting in lawful self-defense); OR
6. a. discharges a firearm
b. within 100 yards of any occupied school house, court house, or church building; OR
7. a. discharges or shoots a firearm at a mark, at any object, or at random
b. along or across a public highway or into any outbuilding; OR
8. a. carries a firearm or any other weapon readily capable of lethal use
b. i. into any church or place where people have assembled for worship;
ii. into any election precinct on election day;
iii. into any building owned or occupied by any agency of the federal or state government.
9. a. discharges or shoots a firearm

- b. at or from a motor vehicle; OR
 - c. at any person; OR
 - d. at any other motor vehicle; OR
 - e. at any building or habitable structure.
(Unless acting in lawful self-defense)
10. a. carries a firearm, whether loaded or unloaded, or any other weapon readily capable of lethal use
 - b. into any school, onto any school bus; OR
 - c. onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.
11. possesses a firearm while also in possession of a controlled substance that is sufficient for a felony violation of §579.015.

Penalty:

Unlawful use of weapons in violation of subsections 2, 3, 4 or 11 is a class E felony.

Violation of subsection 1, 6, 7 or 8 is a class B misdemeanor unless a concealed weapon is carried onto private property with a sign posted pursuant to §571.107, in which case the penalties of subsection 2 of §571.107 shall apply.

Violation of subsection 5 and 10 is a class A misdemeanor if the firearm is unloaded and a class E felony if the firearm is loaded.

No defendant shall receive an SIS who pleads guilty or is found guilty of subsection one when that defendant has one prior firearm or weapon related felony offense where they received an SIS.

For the first violation of subsection 9, a defendant shall be sentenced to the maximum authorized term for a class B felony.

For any violation of subsection 9 by a prior offender, the sentence shall be the maximum term authorized by a class B felony without the possibility of probation, parole or conditional release for a term of ten years.

For any violation of subsection 9 by a persistent offender, the sentence shall be to the maximum authorized for a class B felony without the possibility for probation, parole or conditional release.

Subsection 9 is a class B felony unless injury or death is inflicted on the victim, in which case the offense is a class A felony.

1. Subsections 1, 3, 4, 6, 7, 8, 9 and 10 **shall not apply** to or affect the following:

- a. All state, county, municipal peace officers, and qualified retired peace officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, **whether such officers are within or outside their jurisdictions or on or off duty**, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer, or any prosecuting or assistant prosecuting attorney or any circuit or assistant circuit attorney who has completed the firearms safety training courses required under subsection 2 of §571.111. Note: Subsection 12 of §571.030 defines “qualified retired peace officer” and subsection 13 sets forth the required identification.
 - b. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;
 - c. Members of the armed forces or national guard while performing their official duty;
 - d. Municipal, State, and Federal Judges, and any municipal or county prosecuting attorney or assistant prosecuting attorney;
 - e. Any person whose bona fide duty is to execute civil or criminal process;
 - f. Any federal probation officer or federal flight deck officer as defined under the federal flight deck officer program (49 U.S.C. § 44921);
 - g. Any state probation or parole officer, including members of the parole board;
 - h. Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the department of public safety under §590.750; and
 - i. Any coroner, deputy coroner, medical examiner, or assistant medical examiner.
 - j. Any member of a fire department or fire protection district employed full-time as an investigator having a valid concealed carry endorsement when reasonably associated with or necessary to the fulfillment of such person’s official duties.
 - k. Any member of a fire department or fire protection district employed full-time having a valid concealed carry endorsement when reasonably associated with or necessary to the fulfillment of such person’s official duties has written approval the governing body of a fire department or fire protection district.
2. Subsections 1, 5, 8 and 10 **do not apply** when the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible.
3. Subsection 1 **does not apply**:
- a. To any person nineteen years of age or older; OR

- b. To any person eighteen years of age or older and a member of the United States Armed Forces or honorably discharged from the United States Armed Forces, and is a citizen of the United States and has either assumed residency in this state or is a member of the Armed Forces stationed in Missouri or is the spouse of such member of the military stationed in Missouri and twenty-one years of age; AND
 - c. When transporting a concealable firearm in the passenger compartment of a motor vehicle, so long as such concealable firearm is otherwise lawfully possessed; OR
 - d. When the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game; OR
 - e. Is in his or her dwelling unit or upon premises over which the actor has possession, authority or control; OR
 - f. Is traveling in a continuous journey peaceably through this state; OR
 - g. If the firearm is otherwise lawfully possessed by a person while traversing school premises for the purposes of transporting a student to or from school, or possessed by an adult for the purposes of facilitation of a school sanctioned firearm-related event.
- 4. Subdivisions 1, 8, and 10 **shall not apply** to any person who has a valid concealed carry endorsement issued pursuant to §§571.101-571.121 or a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state.
 - 5. Persons with valid concealed carry endorsements are **not authorized** to carry concealed firearms into:
 - a. Any police, sheriff, or highway patrol office or station without the consent of the chief law enforcement officer in charge of that office or station. Possession of a firearm in a vehicle on the premises of the office or station shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
 - b. Within twenty-five feet of any polling place on any election day. Possession of a firearm in a vehicle on the premises of the polling place shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
 - c. The facility of any adult or juvenile detention or correctional institution, prison or jail. Possession of a firearm in a vehicle on the premises of any adult, juvenile detention, or correctional institution, prison or jail shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
 - d. Any courthouse solely occupied by the circuit, appellate or supreme court, or any courtrooms, administrative offices, libraries or other rooms of any such court whether or not such court solely occupies the building in question. This subdivision shall also include, but not be limited to, any juvenile, family, drug, or other court offices, any room or office wherein

any of the courts or offices listed in this subdivision are temporarily conducting any business within the jurisdiction of such courts or offices, and such other locations in such manner as may be specified by supreme court rule pursuant to subdivision (6) of this subsection. Nothing in this subdivision shall preclude those persons listed in subdivision (1) of subsection 2 of section 571.030 while within their jurisdiction and on duty, those persons listed in subdivisions (2) and (4) of subsection 2 of section 571.030, or such other persons who serve in a law enforcement capacity for a court as may be specified by supreme court rule pursuant to subdivision (6) of this subsection, from carrying a concealed firearm within any of the areas described in this subdivision. Possession of a firearm in a vehicle on the premises of any of the areas listed in this subdivision shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

- e. Any meeting of the governing body of a unit of local government; or any meeting of the general assembly or a committee of the general assembly, except that nothing in this subdivision shall preclude a member of the body, holding a valid concealed carry endorsement from carrying a concealed firearm at a meeting of the body which (s)he is a member. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- f. The general assembly, supreme court, county or municipality may by rule, administrative regulation, or ordinance, prohibit or limit the carrying of concealed firearms by endorsement holders in that portion of a building owned, leased or controlled by that unit of government. Any portion of a building in which the carrying of concealed firearms is prohibited or limited shall be clearly identified by signs posted at the entrance to the restricted area. The statute, rule or ordinance shall exempt any building used for public housing by private persons, highways or rest areas, firing ranges, and private dwellings owned, leased, or controlled by that unit of government from any restriction on the carrying or possession of a firearm. The statute, rule or ordinance shall not specify any criminal penalty for its violation but may specify that persons violating the statute, rule or ordinance may be denied entrance to the building, ordered to leave the building and if employees of the unit of government, be subjected to disciplinary measures for violation of the provisions of the statute, rule or ordinance. The provisions of this subdivision shall not apply to any other unit of government;
- g. Any establishment licensed to dispense intoxicating liquor or non-intoxicating beer for consumption on the premises, which portion is primarily devoted to that purpose without the consent of the owner or manager. The provisions of this subdivision shall not apply to the

licensee of said establishment. The provisions of this subdivision shall not apply to any bona fide restaurant open to the general public having dining facilities for not less than fifty persons and that receives at least fifty-one percent of its gross annual income from the dining facilities by the sale of food. This subdivision does not prohibit the possession of a firearm in a vehicle on the premises of the establishment and shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. Nothing in this subdivision authorizes any individual who has been issued a concealed carry endorsement to possess any firearm while intoxicated;

- h. Any area of an airport to which access is controlled by the inspection of persons and property. Possession of a firearm in a vehicle on the premises of the airport shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- i. Any place where the carrying of a firearm is prohibited by federal law;
- j. Any higher education institution or elementary or secondary school facility without the consent of the governing body of the higher education institution or a school official or the district school board. Possession of a firearm in a vehicle on the premises of any higher education institution or elementary or secondary school facility shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- k. Any portion of a building used as a child care facility without the consent of the manager. Nothing in this subdivision shall prevent the operator of a child care facility in a family home from owning or possessing a firearm or a driver's license or non-driver's license containing a concealed carry endorsement;
- l. Any riverboat gambling operation accessible by the public without the consent of the owner or manager pursuant to rules promulgated by the gaming commission. Possession of a firearm in a vehicle on the premises of a riverboat gambling operation shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- m. Any gated area of an amusement park. Possession of a firearm in a vehicle on the premises of the amusement park shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- n. Any church or other place of religious worship without the consent of the minister or person or persons representing the religious organization that exercises control over the place of religious worship. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

- o. Any private property whose owner has posted the premises as being off-limits to concealed firearms by means of one or more signs displayed in a conspicuous place of a minimum size of eleven inches by fourteen inches with the writing thereon in letters of not less than one inch. The owner, business or commercial lessee, manager of a private business enterprise, or any other organization, entity, or person may prohibit persons holding a concealed carry endorsement from carrying concealed firearms on the premises and may prohibit employees, not authorized by the employer, holding a concealed carry endorsement from carrying concealed firearms on the property of the employer. If the building or the premises are open to the public, the employer of the business enterprise shall post signs on or about the premises if carrying a concealed firearm is prohibited. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed carry endorsement from carrying a concealed firearm in vehicles owned by the employer;
 - p. Any sports arena or stadium with a seating capacity of five thousand or more. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
 - q. Any hospital accessible by the public. Possession of a firearm in a vehicle on the premises of a hospital shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.
6. Carrying of a concealed firearm in a location specified in subdivisions (1) to (17) of subsection 20 of this section by any individual who holds concealed carry endorsement issued pursuant to this section shall not be a criminal act but may subject the person to denial to the premises or removal from the premises. If such person refuses to leave the premises and a peace officer is summoned, such person may be issued a citation for an amount not to exceed one hundred dollars for the first offense. If a second citation for a similar violation occurs within a six-month period, such person shall be fined an amount not to exceed two hundred dollars and his or her endorsement to carry concealed firearms shall be suspended for a period of one year. If a third citation for a similar violation is issued within one year of the first citation such person shall be fined an amount not to exceed five hundred dollars and shall have his or her concealed carry endorsement revoked and such person shall not be eligible for a concealed carry endorsement for a period of three years. Upon conviction of charges arising from a citation issued pursuant to this subsection, the court shall notify the sheriff of the county which issued the certificate of qualification for a concealed carry endorsement and the department of revenue. The sheriff shall suspend or revoked the certificate of

qualification for a concealed carry endorsement and the department of revenue shall issue a notice of such suspension or revocation of the concealed carry endorsement and take action to remove the concealed carry endorsement from the individual's driving record. The director of revenue shall notify the licensee that (s)he must apply for a new license pursuant to Chapter 302 which does not contain such endorsement. A concealed carry endorsement suspension pursuant to this section shall be reinstated at the time of the renewal of his or her driver's license. The notice issued by the department of revenue shall be mailed to the last known address shown on the individual's driving record. The notice is deemed received three days after mailing.

NOTE: While it is lawful for a person to carry a concealed firearm in a car, the firearm must be "lawfully possessed." Hence, if the firearm is stolen, or they are a felon possessing a firearm in violation of state or federal law, the offender is subject to arrest for carrying a concealed weapon.

Comments:

Intent to carry a concealed weapon may be inferred from a demonstrated concealment. The State does not have to show the defendant intended to use the weapon; intent to carry it suffices for conviction. A weapon not discernable by ordinary observation is deemed "concealed."

The second element of the offense requires the weapon to be on the person of the defendant. A weapon will be "on the defendant's person" if it is carried by the defendant in an unlocked attaché case, in a crevice of the front seat of a car the defendant is driving, under the driver's seat of defendant's car, or in the defendant's purse.

Examples:

1. George works as a night custodian and watchman for Night-Life Services. While at work George gets into an argument with a person seeking admittance to a building. George unjustifiably takes his loaded revolver and points it at the other person and angrily tells the person to leave "or else." George is guilty under part (4) of exhibiting a weapon readily capable of lethal use in an angry or threatening manner.

2. Jim is drinking at his friendly neighborhood bar when he becomes enraged over certain derogatory statements made about him by Ed. The argument escalates to a physical confrontation in which Jim gets the “stuffing” beat out of him. Somewhat embarrassed and intent upon revenge, Jim goes to his car and waits for Ed to enter his own car and drive away. As Ed is driving to the next bar, Jim drives up beside him and fires three shots from a handgun into the rear driver’s side door of Ed’s car. Jim is guilty under part (9) of a drive-by shooting. Since nobody was injured, Jim has committed a class B felony.

Cross Reference:

Knowingly

10.6 Defacing Firearm (§571.045)
Class A Misdemeanor

Elements:

A person commits the offense of defacing a firearm if (s)he:

1. knowingly
2. defaces any firearm.

Comments:

This section is designed to curb the number of non-traceable street weapons and is closely related to the removal of item numbers offenses. A firearm is "defaced" if the manufacturer's or importer's serial number or any other distinguishing number or identification mark is altered or destroyed.

10.7 Possession of a Defaced Firearm (§571.050)
Class B Misdemeanor

Elements:

A person commits the offense of possession of a defaced firearm if (s)he:

1. knowingly
2. possesses
3. a firearm which is defaced.

Comments:

This section will become useful when it cannot be established that the person in possession of the defaced firearm was the one who altered or removed the

manufacturer's serial number. A knowing intent may be difficult to establish without a statement by the arrested person found in possession of the defaced weapon.

Cross References:

Knowingly

Definitions:

Deface-to alter or destroy the manufacturer's or importer's serial number or any other distinguishing number or identification mark.

10.8 Unlawful Transfer of Weapons (§571.060)**Class E Felony or Class A Misdemeanor****Elements:**

A person commits the offense of unlawful transfer of weapons if (s)he:

1. a. knowingly
b. sells, leases, loans, gives away, or delivers
c. any firearm or ammunition for a firearm
d. to any person not lawfully entitled to possess such (See Comments and ¶10.10) (class E felony); OR
2. a. knowingly
b. sells, leases, loans, gives away, or delivers
c. a blackjack
d. to a person less than 18 years old
e. without the consent of the child's custodial parent or guardian (class A misdemeanor); OR
3. a. recklessly (§562.016)
b. sells, leases, loans, gives away, or delivers
c. any firearm
d. to a person less than 18 years old
e. without the consent of the child's custodial parent or guardian (class A misdemeanor); OR
4. a. recklessly (§562.016)
b. sells, leases, loans, gives away, or delivers
c. a firearm or ammunition for a firearm to a person who is intoxicated (class A misdemeanor).

Comments:

This statute does not prohibit the delivery of weapons or firearms to any peace officer or member of the armed forces while performing his/her official duty. This statute penalizes the provider of weapons which are likely to be used in a crime.

Examples:

1. E Z Liquors and Ammo sells some rifle shells to Donald. The owner of E Z Liquors knows that Donald was convicted two years ago for possession of a controlled substance and for robbery, but Donald said that he needs the shells to go deer hunting. The owner of E Z Liquors is guilty under part (1) for selling ammunition to Donald with the knowledge that Donald is not lawfully entitled to possess such under §571.070. The prior drug related conviction of Donald's that was within the knowledge of the store owner may be evidence of a violation in selling to a person habitually in a drugged condition.
2. Donald, age 17, goes into E Z Liquors and Ammo and purchases a hunting rifle. The store owner does not ask for identification or inquire as to Donald's age or whether Donald has his parent's consent to make the purchase. The owner may be guilty under part (3) of the unlawful transfer of weapons by recklessly selling the hunting rifle to Donald if it can be shown that he was aware of a substantial risk that Donald was under age.

10.9 Fraudulent Purchase of a Firearm (§571.063)**Class E Felony****Elements:**

A person commits the offense of fraudulent purchase of weapons if (s)he:

1. a. knowingly;
b. solicits, persuades, encourages or entices;
c. a licensed dealer or private seller of firearms or ammunition;
d. to transfer a firearm or ammunition;
e. knowing such transfer would violate the laws of the State of Missouri or of the United States; OR
2. a. knowingly provides what they know to be materially false information;
b. to a licensed dealer or private seller of firearms or ammunition;
c. with the intent to deceive that dealer or seller about the legality of the transfer; OR
3. willfully procures another to violate the provisions of either 1. or 2. above.

10.10 Unlawful Possession of a Firearm (§571.070)
Penalty Varies (See Below)

Elements:

A person commits the offense of unlawful possession of a firearm if (s)he:

1. knowingly possesses any firearm; AND
2. and one of the following applies:
 - a) (s)he has been convicted has been convicted of a felony under the laws of the State of Missouri; (*does not apply to the possession of an antique firearm*) OR
 - b) (s)he has been convicted of an offense under the laws of another state or of the United States which, if committed in the State of Missouri, would be a felony; OR
 - c) (s)he is a fugitive from justice; OR
 - d) (s)he is habitually in an intoxicated or drugged condition; OR
 - e) (s)he is currently adjudged mentally incompetent.

Penalty:

Unlawful possession of a firearm is a class D felony. If the person has been previously convicted of a dangerous felony as defined in §556.061 it is a class C felony.

Example:

A police officer stops Eugene for a traffic violation in the early morning hours. When the officer approaches Eugene's vehicle, he notices a .38 caliber revolver on the front seat of the car fully visible. The officer advises Eugene to step out of the car whereupon the officer seizes the firearm and discovers that it is unloaded and that there is no ammunition in the vehicle. A record and wanted check on Eugene discloses that Eugene has a prior conviction for assault and two prior burglary convictions. Eugene is guilty of unlawful possession of a concealable firearm. Note that if Eugene did not have a record of a felony in this case, there would have been no violation under this section. Remember, however, that under this section a person is guilty if they possess any firearm, and the person has a prior felony conviction, is a fugitive, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent.

**10.11 Transfer of Concealable Firearms without a Permit
(\$571.080)****Elements:**

A person commits the offense of transfer of a concealable firearm if such person violates 18 U.S.C. § 922(b) or 18 U.S.C. § 922(x).

**10.12 Metal-Penetrating Bullet (§571.150)
Class B Felony****Elements:**

A defendant violates this section if (s)he:

1. a. uses; OR
- b. possesses
2. a metal penetrating bullet
3. during the commission of an offense.

Comments:

The purpose of this section is to outlaw bullets that have the capability and were designed to penetrate a flak jacket or bullet proof vest often worn by police officers.

Definition:

Metal-penetrating bullet-handgun bullet or projectile of 9mm, .25, .32, .38, .357, .41, .44, or .451 or other caliber which is compressed to a hardened core equal to

the minimum of the maximum attainable hardness by solid red alloy which purposely reduces the normal expansion or mushrooming of the bullet's or projectile's shape upon impact. This does not include any bullet or projectile composed of copper or brass jacket with lead or lead alloy cores or any bullet or projectile composed of lead or lead alloys.

10.13 Unlawful Possession of an Explosive Weapon (§571.072)
Class D Felony

Elements:

A defendant violates this section if (s)he:

1. possesses an explosive weapon, AND
2. (s)he has pled guilty or been convicted of a dangerous felony or of an attempt to commit a dangerous felony or of an offense under the laws of any other state or of the United States that would be a dangerous felony if committed in the State of Missouri, OR
3. (s)he has been imprisoned in this state or elsewhere during the five-year period immediately preceding the date of possession, OR
4. (s)he is a fugitive from justice, OR
5. (s)he is habitually in an intoxicated or drugged condition, OR
6. (s)he is currently adjudged mentally incompetent.

Chapter 11

Offenses Against Public Order

(Chapter 574)

11.1 Introduction

This chapter covers the offense of peace disturbance, unlawful assembly, rioting, and refusal to disperse.

11.2 Peace Disturbance (§574.010)

Penalty Varies (See Below)

Elements:

A person commits the offense of peace disturbance if (s)he:

1. unreasonably and knowingly disturbs or alarms another person or persons by:
 - a. loud noise; OR
 - b. offensive language **addressed in a face-to-face manner to a specific individual and uttered under circumstances which are likely to produce an immediate violent response from a reasonable recipient;** OR
 - c. threatening to commit a **felonious act** against any person **under circumstances which are likely to cause a reasonable person to fear that such a threat may be carried out;** OR
 - d. fighting; OR
 - e. creating a noxious and offensive odor; OR
2. a. is in a public place or on private property of another without consent; AND
 - b. purposely causes inconvenience to a person or persons by unreasonably and physically obstructing
 - i. vehicular or pedestrian traffic; OR
 - ii. free ingress or egress to or from a public or private place.

Penalty:

Peace disturbance is a class B misdemeanor upon the first conviction. Upon a second or subsequent conviction, peace disturbance is a class A misdemeanor. Upon a third or subsequent conviction, a defendant shall be sentenced to pay a fine of not less than one thousand dollars and not more than five thousand dollars.

Comments:

The offense of peace disturbance was redefined in part to overcome constitutional freedom of speech challenges. The first part of this section makes it an offense to unreasonably and knowingly cause alarm to another person. No longer do the disturbers and the alarmed person have to be on different premises. Abusive language by itself is not sufficient for peace disturbance unless what is said constitutes "fighting words", i.e., what is said would evoke a violent response from a reasonable person. **Note** that in every instance the criminal actor must be aware his or her conduct is causing alarm to others.

Examples:

1. Elaine is having a party on her own property and the neighbors are complaining about the loud music. The police advise Elaine that the loud music is disturbing the neighbors. Elaine persists in playing the music at an unreasonably loud level. Elaine may be guilty of peace disturbance under (1).
2. Donald is a guest at a party at Al's home. Donald is offended when Al calls him vulgarities and Donald threatens to punch Al in the mouth. The other guests are alarmed. Al may be guilty of peace disturbance if striking Al is a likely response to the verbal abuse. If Donald was acting unreasonably in response to Al's remarks, then Donald may be guilty of peace disturbance in threatening to commit an offense.
3. Al is driving his car down the street when suddenly the engine stalls. The car rolls to a stop in front of Carl's driveway preventing access to the driveway. Al has not committed peace disturbance because he has not purposely caused inconvenience to others.
4. Members of a local labor union are on strike and have set up a picket line. The members physically obstruct the entrance to the business establishment. The union members have committed the offense of peace disturbance under (2).

11.3 Private Peace Disturbance (§574.020)
Class C Misdemeanor

Elements:

A person commits the offense of private peace disturbance if:

1. (s)he is on private property; AND
2. unreasonably and purposely causes alarm to another person or persons on the same premises
 - a. by threatening to commit an offense against any person; OR
 - b. by fighting.

Comments:

This section is designed to cover the situation where the actor is at home (or visiting friends) and alarms someone else on the same premises by threatening to commit an offense or by fighting. The individual must have the "purpose" to alarm, and it must be unreasonable.

If the person causing alarm is on his/her own private property or the private property of another, and the person alarmed is on the same property, the offense will be under this section. If the suspect is not on the same premises as the complainant, or is on private property without consent or in a public place, then one of the subsections of §574.010 will apply.

Example:

Donald is a guest at a party at Al's home. He is offended by something another guest says to him, and threatens to punch him in the mouth. The other guest is alarmed. Donald has committed the offense of private peace disturbance because he is on private property and unreasonably and purposely causes alarm to the other guest by threatening to commit an assault on him.

11.4 Disrupting a House of Worship (§574.035)
Penalty Varies (See Below)

Elements:

A person commits the offense of disrupting a house of worship if such person:

1. intentionally and unreasonably,
 - a) disturbs, interrupts or disquiets,
 - b) any house of worship,
 - c) by using
 - i) profane discourse, or
 - ii) rude or indecent behavior, OR

- d) by making noise so as to disturb the order and solemnity of the worship service, OR
- 2. intentionally (or attempts to)
 - a) by force, threat, or physical obstruction,
 - b) injures, intimidates, or interferes with
 - c) any person lawfully exercising the right of religious freedom in or outside of a house of worship or seeking access to a house of worship.

Penalty:

Disrupting a house of worship is a **class B misdemeanor**. Any second offense is a **class A misdemeanor**, and any third or subsequent offense is a **class E felony**.

11.5 Unlawful Assembly (§574.040)**Class B Misdemeanor****Elements:**

A person commits the offense of unlawful assembly if (s)he:

- 1. knowingly assembles
- 2. with six or more other persons; AND
- 3. agrees with such persons to violate any of the criminal laws of the state or the United States
- 4. with force or violence.

Comments:

This section is aimed at punishing the seven or more persons who meet and form a common purpose to violate any of the criminal laws. They do not actually have to violate the law. If they do violate one of the laws of the State or the United States, they would be guilty of rioting, §574.050.

This section has changed the law. Pre-Code statutes required the assembly of only three persons to constitute unlawful assembly. **The Code requires at least seven people.**

All seven persons who engaged in the unlawful assembly are guilty of this same offense.

11.6 Rioting (§574.050)**Class A Misdemeanor****Elements:**

A person commits the offense of rioting if (s)he:

- 1. knowingly assembles
- 2. with six or more other persons; AND

3. agrees with such persons to violate any of the criminal laws of this State or the United States with force or violence; AND
4. does violate any of said laws with force or violence while still so assembled.

Comments:

This offense has also changed from the pre-Code law. Seven people, instead of three, are now necessary to commit this offense, and it is no longer necessary to prove that the criminal law was violated "to the terror or disturbance of peaceful citizens."

Examples:

1. Seven people assemble and agree to patronize a prostitute. They find a prostitute and pay her to engage in sexual conduct with them. The seven people have not committed the offense of rioting because they have not violated a criminal law with force or violence.
2. Seven people assemble and agree to go to a bar to "rough up" the patrons and disturb the peace. They go into a bar, and one of the seven, Donald, hits a patron. A fight begins. All seven of the persons who assembled have committed the offense of rioting. They agreed to violate a criminal law, "peace disturbance," and Donald did violate it with the use of force and violence. The other six are responsible for Donald's conduct under the provisions of §562.041, because they aided Donald in planning to commit the offense for the purpose of promoting its commission. Normally, a disturbance of the peace offense will not be sufficient for a rioting offense; however, since the disturbance was done with force or violence, it is sufficient to constitute rioting. They are also guilty of peace disturbance and assault.

11.7 Refusal to Disperse (§574.060)**Class C Misdemeanor****Elements:**

A person commits the offense of refusal to disperse if:

1. being present at the scene of an unlawful assembly, or at the scene of a riot
2. (s)he knowingly fails or refuses to obey
3. the lawful command of a law enforcement officer to depart from the scene of such unlawful assembly or riot.

Comments:

This section requires a "knowing" failure to obey and is limited to commands of law enforcement officers. To be guilty, a defendant must be at the scene of a riot or unlawful assembly and know of the command to disperse, and still refuses to obey.

11.8Promoting Civil Disorder in the First Degree (§574.070)
Class D Felony

Elements:

A defendant is guilty of promoting civil disorder in the first degree if that person:

1. teaches or demonstrates to any other person
2. the use, application, or construction of any firearm, explosive, or incendiary device capable of causing injury or death to any person
3. knowing or intending that
4. the firearm, explosive, or incendiary device be used in furtherance of a civil disorder.

Comments:

Exempted from this offense are law enforcement training, hunting, recreation, competition, and other lawful uses and activities.

Definitions:

Civil disorder-any public disturbance involving acts of violence by assemblages of three or more persons which causes an immediate danger of, or results in, damage or injury to property or persons. **Note:** the statute defines civil disorder as involving three or more persons, even though six or more are needed for purposes of the violations set out in §574.010 and §574.050.

Firearm-any weapon designed or readily converted to expel any projectile by the use of an explosive, or the frame or receiver of any such weapon.

Explosive or incendiary device-dynamite, explosive bomb, grenade, missile, firebomb, or "Molotov cocktail."

Example:

The Freedom Fighters, a white supremacy group with a stated purpose of causing a white uprising against the black race, conduct training programs with firearms and explosives. The group is guilty of promoting civil disorder in the first degree.

11.9 Drunkenness or Drinking in Certain Places Prohibited (§574.075)
Class B Misdemeanor**Elements:**

A defendant violates this section if (s)he:

1. enters any schoolhouse, church house, or courthouse
2. in which there is lawful assemblage of people
3. a. in an intoxicated or disorderly condition; OR
- b. to drink any intoxicating liquors in the presence of such assembly; OR
- c. to offer to drink any intoxicating liquors in the presence of such an assembly; OR
- d. if in a courthouse the person need not be in the presence of an assemblage of persons.

Example:

A student's father arrives at school in an intoxicated condition to pick up his son. The father is in a belligerent attitude due to the intoxication and the teacher fears allowing the son to leave with his father. On entering school, the father has violated this section.

11.10 Institutional Vandalism (§574.085)
Penalty Varies (See Below)**Elements:**

A person commits the offense of institutional vandalism by:

1. knowingly
2. vandalizing, defacing, or otherwise damaging:
 - a. any church, synagogue, or other place of religious worship;
 - b. any cemetery, mortuary, military monument, or other facility used for memorializing the dead;
 - c. any school, educational facility, community center, hospital, or medical clinic owned and operated by a religious or sectarian group;
 - d. the grounds adjacent to any such facility;
 - e. any personal property contained in such facilities; OR
 - f. any motor vehicle which is owned, operated, leased or under contract by a school district or a private school for the transportation of school children; OR
 - g. Any public monument or structure on public property owned or operated by a public entity.

Institutional vandalism is a class A misdemeanor, except when the damage or loss to property exceeds \$750.00, the offense is a class E felony and, if the damage or

loss exceeds \$5,000.00, the offense is a class D felony. Damages and loss are to be measured by the cost of repair, including replacement of the property damaged or lost.

Examples:

1. John and Bob got drunk one night and drove to the local cemetery. They had a great time knocking down old headstones. One of the headstones they damaged cost \$3,000.00 to replace. John and Bob are guilty of institutional vandalism, and the offense is a class E felony.
2. Several members of a youth gang descend upon a synagogue and write graffiti all over the building wall. They are guilty of institutional vandalism. The class of the offense depends on the cost of repairing the damage.

11.11 Invasion of Privacy (§565.252)
Penalty Varies (See Below)**Elements:**

A person commits the offense of invasion of privacy if (s)he:

1. knowingly photographs, films, videotapes, produces, or otherwise creates an image of
2. another person
3. without the person's consent;
 - a. while in a state of full or partial nudity and is in a place where (s)he would have a reasonable expectation of privacy; or
 - b. under or through the clothing worn by that other person for the purpose of viewing the body of or the undergarments worn by that other person.

Penalty:

Invasion of privacy is a Class A Misdemeanor. If the defendant distributes the image to another or transmits the image in a manner that allows access via computer, or disseminates to another, or more than one person is viewed, photographed, filmed or videotaped during the same course of conduct, or (s)he has previously been found guilty of invasion of privacy, then it is a Class E Felony.

Definition:

“Full or partial nudity:” the showing of all or any part of the human genitals, pubic area, buttock, or any part of the nipple of the breast of any female person, with less than a fully opaque covering.

“Same course of conduct” means more than one person has been viewed, photographed, filmed, or videotaped under the same or similar circumstances pursuant to one scheme or course of conduct, whether at the same or different times.

11.12 Making a Terrorist Threat, First Degree (§574.115)
Class D Felony

Elements:

A person commits the offense of making a terrorist threat in the first degree if (s)he:

1. With the purpose of frightening ten or more people or causing the evacuation, quarantine or closure of any portion of a building, habitable structure, place of assembly or facility of transportation
2. knowingly communicates an express or implied threat to cause an incident or condition involving danger to life; OR
3. knowingly communicates a knowingly false report of an incident or condition involving danger to life; OR
4. knowingly causes a false belief or fear that an incident has occurred or that a condition exists involving danger to life;

A person who acts in good faith with the purpose to prevent harm does not commit an offense pursuant to this section.

11.13 Making a Terrorist Threat, Second Degree (§574.120)
Class E Felony

Elements:

A person commits the offense of making a terrorist threat in the second degree if (s)he:

1. Recklessly disregards the risk of causing the evacuation, quarantine or closure of any portion of a building, habitable structure, place of assembly or facility of transportation: AND
2. Knowingly communicates an express or implied threat to cause an incident or condition involving danger to life; OR

3. Knowingly communicates a false report of an incident or condition involving danger to life; OR
4. Knowingly causes a false belief or fear that an incident has occurred or that a condition exists involving danger to life.

A person who acts in good faith with the purpose to prevent harm does not commit an offense pursuant to this section.

11.14 Making a Terrorist Threat, Third Degree (§574.120)
Class A Misdemeanor

Elements:

A person commits the offense of making a terrorist threat in the third degree if (s)he:

1. With criminal negligence with regard to the risk of causing the evacuation, quarantine or closure of any portion of a building, inhabitable structure, place of assembly or facility of transportation;
2. Knowingly communicates an express or implied threat to cause an incident or condition involving danger to life; OR
3. Knowingly communicates a knowingly false report of an incident or condition involving danger to life; OR
4. Knowingly causes a false belief or fear that an incident has occurred or that a condition exists involving danger to life.

A person who acts in good faith with the purpose to prevent harm does not commit an offense pursuant to this section.

11.15 Interference with a Health Care Facility (§574.203)
Penalty Varies (See Below)

Elements:

A person (other than a developmentally disabled person as defined in §630.005) commits the offense of interfering with a health care facility is crime if (s)he willfully or recklessly interferes with a health care facility or an employee of a health care facility by:

1. Causing a peace disturbance inside the facility;
2. Refusing an order to vacate a when requested by any employee of the facility;
3. Threatening to inflict injury on patients or employees of the facility;
OR
4. Threatening to damage property of the facility.

excluding any person who is 2 developmentally disabled as defined in section 630.005,

"Health care facility" means a hospital that provides health care services directly to patients.

Penalty:

Interference with a health care facility is a class D misdemeanor for a first offense and a class C misdemeanor for any second or subsequent offense.

11.16 Interference with an Ambulance Service (§574.204)**Penalty Varies (See Below)**

A person (other than a developmentally disabled person as defined in §630.005) commits the offense of interference with an ambulance service if (s)he acts willfully or recklessly to:

1. interfere with access to or from an ambulance; OR
2. disrupt an ambulance service by threatening to inflict injury on any person providing ambulance services or by threatening to damage the ambulance.

"Ambulance service" means a person or entity that provides emergency or nonemergency ambulance transportation and services.

Penalty:

Interference with an ambulance service is a class D misdemeanor for a first offense and a class C misdemeanor for any second or subsequent offense.

Chapter 12

Offenses Against the Administration of Justice & Offenses Affecting Government

(§§575.010-575.320)

12.1 Introduction

This chapter covers Chapter 575 and Chapter 576. They are covered together in this Handbook because there is a substantial similarity in the conduct made criminal by both chapters.

12.2 Concealing an Offense (§575.020)

Penalty Varies (See Below)

Elements:

A person commits the offense of concealing an offense if (s)he:

1. a. confers or agrees to confer pecuniary or other type of benefit
b. on a person in consideration of that person's
 - i. concealing an offense; OR
 - ii. refraining from starting or aiding in the prosecution of an offense;
OR
 - iii. withholding evidence of the offense; OR
2. a. accepts or agrees to accept a pecuniary or other type of benefit
b. in consideration for
 - i. concealing an offense; OR
 - ii. refraining from starting or aiding in the prosecution of an offense;
OR
 - iii. withholding evidence of the offense.

Penalty:

Concealing an Offense is a Class E Felony if the offense concealed is a felony. It is a Class A Misdemeanor if the offense concealed is a misdemeanor or an infraction.

Comments:

This section deals with the offense sometimes called "compounding." The purpose of the statute is to discourage people from giving or receiving any type of benefit in return for concealing an offense or refusing to aid in the prosecution of an offense. This is a change from the pre-Code law which made only the receipt

of a benefit an offense. Under the Code, the person who offers to pay for concealment is also guilty. The statute covers the concealment of all offenses: felonies, misdemeanors, and infractions. A defendant violates the statute if, in order to receive money or other benefit, (s)he conceals the fact that an offense has been committed, (s)he withholds evidence, or agrees not to prosecute an offense. Likewise, the person who pays the money or gives the benefit for reasons specified above is also guilty. The statute does not cover a mere failure to report an offense.

Examples:

1. Donald commits the offense of burglary and offers to pay Walter, a witness, \$1,000.00 if he will agree not to tell the police who did it. Walter agrees and accepts payment. Donald and Walter are guilty of violating the statute. Donald has conferred a benefit on Walter for refraining from aiding the prosecution and Walter has accepted. Donald would be guilty even if Walter had not accepted his offer.
2. Donald has committed burglary and asks his friend Sam to hide the property. Donald offers to let Sam have one of the radios that was stolen. Sam accepts. Donald and Sam are guilty of concealing an offense. Donald has conferred a benefit on Sam in return for an agreement by Sam to withhold evidence of the offense.

12.3 Hinderance (§575.030)**Penalty Varies (See Below)****Elements:**

A person commits the offense of hindering prosecution if (s)he:

1. with the purpose of preventing the apprehension, prosecution, conviction, or punishment of a person who has committed an offense;
2. harbors or conceals the person; OR
3. warns the person that (s)he is soon to be discovered and apprehended (unless done in an effort to bring that person into compliance with the law); OR
4. provides money, transportation, weapons, disguises, or other means to help the person avoid discovery or apprehension; OR
5. prevents or obstructs another by using force, deception, or intimidation to prevent him/her from doing something to aid the discovery or apprehension of the suspect.

NOTE: another is not the police, but some other person who would help the police.

Penalty:

Hindering Prosecution is a Class E Felony if the offense committed was a felony. It is a Class A Misdemeanor if the offense committed was a misdemeanor.

Comments:

A person violates this statute by preventing or obstructing the apprehension, prosecution, conviction, or punishment of another. In other words, a person can only be convicted of hindering the prosecution of another and not of hindering his/her own apprehension.

Example:

Donald commits the offense of second degree robbery. He then goes to his brother Bob's house and convinces his brother to hide him, bring him supplies, and watch for signs that the police are closing in. Bob is guilty of hindering prosecution because he is concealing an offender in his home.

NOTE: The fact that Bob is Donald's brother makes no difference under the Code. He is not exempt from guilt on that basis. Also, if Bob had merely agreed to allow Donald to live with him, but not to conceal him or warn him if the police were coming, he would not be guilty.

Cross Reference:

With purpose

Related Offenses:

Concealing an offense	¶12.2
Tampering with physical evidence	¶12.15

12.4 Perjury (§575.040)
Penalty Varies (See Below)

Elements:

A person commits the offense of perjury if (s)he:

1. knowingly testifies falsely about a material fact
2. under oath or affirmation; OR
3. in an official proceeding before a:
 - a. court; OR

- b. public body; OR
 - c. notary public; OR
 - d. other officers authorized to administer oaths
4. with the purpose to deceive.

Penalty:

Class E Felony-if committed in a proceeding not involving a felony charge;

Class D Felony-if committed in a proceeding involving a felony charge;

In some cases, the penalty is greater:

Class A Felony-if committed to secure the conviction of the accused for murder;

Class B Felony-if committed to secure the conviction of accused for a felony other than murder.

Comments:

A person who testifies falsely in a proceeding, but in good faith with the honest belief (s)he is telling the truth, is not guilty of perjury.

A material fact is one which could or did substantially affect the outcome of the cause, matter, or proceeding.

- 1. It is not necessary for the defendant to know the fact is material.
- 2. It makes no difference that the defendant believed it was immaterial.

False testimony as to one point in a prior proceeding is material and can be the subject of perjury even though such testimony may not have been necessary to the result in the proceeding and although such a result could have been obtained even without the false testimony.

NOTE: If the defendant retracts the false statement during the preceding and prior to the time the falsity is exposed, the defendant has a defense to perjury. The defendant has the burden of injecting the defense.

To violate the statute a person must make a false statement concerning a material fact, knowing that the statement is false. In addition, his/her purpose must be to deceive those who hear the statement.

Cross Reference:

Knowingly
With purpose
Official proceeding
Testimony
Burden of injecting the issue

Related Offense:

False affidavit ¶12.5

Example:

Donald, during the criminal trial, falsely denies prior convictions. This is material on the issue of credibility and therefore could serve as a basis for a perjury conviction.

12.5 False Affidavit (§575.050)

Penalty Varies (See Below)

Elements:

A person commits the offense of making a false affidavit if (s)he:

1. swears falsely
2. in any affidavit
3. to a fact material to the purpose of the affidavit
4. with the purpose to mislead any person.

Penalty:

False Affidavit is a Class A Misdemeanor if done for the purpose of misleading a public servant in the performance of duty; otherwise, it is a Class C Misdemeanor.

Comments:

A material fact is one, which could or did substantially affect the outcome of the cause, matter, or proceeding.

1. It is not necessary for the defendant to know the fact is material.
2. It makes no difference that the defendant believed it immaterial.

NOTE: If the defendant retracts the false statement by affidavit or testimony:

1. before the falsity is exposed; OR
2. before anyone substantially relies on the statement (s)he has a defense.

Cross References:

Affidavit
With purpose
Burden of injecting the issue

Related Offenses:

Perjury	¶12.4
False declarations	¶12.6

12.6 False Declarations (§575.060)
Class B Misdemeanor

Elements:

A person commits the offense of making a false declaration if:

1. a. with the purpose of misleading a public servant in the performance of his/her duty
b. (s)he makes a written false statement about a material fact, believing it is not true
c. i. in an application to receive a payment or other type of benefit; OR
ii. on a form which declares that false statements are punishable at law;
OR
2. a. with the purpose of misleading a public servant in the performance of his/her duty
b. a person makes or encourages another to rely on
i. a writing (s)he knows is forged, altered, or otherwise not authentic;
OR
ii. a sample, specimen, map, boundary mark, or other object (s)he knows is false.

Comments:

The statement must be false as to a material fact. A material fact is one which could or did substantially affect the outcome of the cause, matter, or proceeding.

1. It is not necessary for the defendant to know the fact is material.
2. It makes no difference that the defendant believes the fact to be immaterial.

NOTE: If the defendant retracts the false statement prior to:

1. the exposure of the falsity of the statement; OR
2. substantial action by the public servant relying on the statement (s)he shall have a defense to this charge.

False declarations cover the making of false statements or supplying false items to public servants for the purpose of misleading them. It requires that the falsity be material and provides for a limited retraction of false statements.

Example:

Dorothy is seeking aid for her dependent children. On the form she reports that she has six children when, in fact, she has only four. She has also made arrangements with a friend to "borrow" her two children when the caseworker comes to visit. Dorothy does this to receive a larger amount of aid. She has committed the offense of making a false declaration because she has knowingly made a material false statement on an application to receive payment. It does not matter that she did not receive any increased payment.

Cross References:

Public servant
Burden of injecting the issue

Related Offense:

False affidavit ¶12.5

12.7 Reproduced, Modified, or Altered Identification (§311.329)
Class A Misdemeanor**Elements:**

A person commits the offense of possessing reproduced, modified, or altered identification if (s)he:

- A. 1. possesses a reproduced, OR
2. a modified, OR
3. an altered
- B. 1. motor vehicle driver's license, OR
2. non-driver's license issued by any uniformed service of the United States,
OR
3. any identification card established in §302.181 OR
4. any other such identification card, **which**
- C. 1. indicates that the person represented on the card is over twenty-one years
of age.

12.8 Proof of Falsity of Statements (§575.070)

This section specifically sets out the type of evidence required to prove perjury, the making of a false affidavit, or the making of a false declaration. The statute provides:

No defendant shall be convicted of a violation of §575.040, §575.050, or §575.060 based upon the making of a false statement except upon proof of the falsity of the statement by:

1. the direct evidence of two witnesses; OR
2. the direct evidence of one witness together with strongly corroborating circumstances; OR
3. demonstrative evidence which conclusively proves the falsity of the statement; OR
4. a directly contradictory statement by the defendant under oath together with:
 - a. the direct evidence of one witness; OR
 - b. strongly corroborating circumstances; OR
5. a judicial admission by the defendant that (s)he made the statement knowing it was false. An admission, which is not a judicial admission, by the defendant that (s)he made the statement knowing it was false may constitute strongly corroborating circumstances.

12.9 False Reports (§575.080)**Class B Misdemeanor****Elements:**

A person commits the offense of making a false report if (s)he:

1. a. knowingly gives false information
b. to any person
c. for the purpose of implicating another in an offense; OR
2. a. knowingly makes a false report
b. to a law enforcement officer
c. that an offense has occurred or is about to occur; OR
3. a. knowingly makes or causes a false report to be made
b. to a law enforcement officer, security officer, fire department, or other organization official or volunteer, which deals with emergencies involving danger to life or property
c. that a fire or other incident calling for an emergency response has occurred or is about to occur.

Comments:

If the defendant retracts the false statement or report prior to anyone taking action in reliance on the statement (s)he has a defense. This section makes it an offense to make any type of false reports or statements to police officers or organizations, which handle emergencies.

Cross References:

Knowingly
Law enforcement officer
Burden of injecting the issue

Related Offense:

False bomb report ¶12.11

**12.10 Emergency 911 Telephone Service-Misuse (§190.308)
Class B Misdemeanor**

A person commits the offense of misusing the Emergency 911 Telephone Service when:

1. In any county that has established an emergency telephone service pursuant to §§190.300-190.320, a person can misuse the emergency telephone service. For the purposes of this section, “emergency” means any incident involving danger to life or property that calls for an emergency response dispatch of police, fire, EMS, or other public safety organization. “Misusing the emergency telephone service,” includes, but is not limited to, repeatedly calling “911” for non-emergency situations which causes operators or equipment to be in use when emergency situations may need such operators or equipment; and “repeatedly” means three or more times within a one-month period.

**12.11 False Bomb Report (§575.090)
Class E Felony****Elements:**

A person commits the offense of making a false bomb report if (s)he:

1. knowingly makes or causes to be made a false report
2. to any person
3. that a bomb or other explosive
4. has been placed in a public or private place or vehicle.

Comments:

This is an aggravated false report statute which carries with it a greater penalty. It covers any false report that a bomb has been placed in a place or vehicle. It is no longer necessary to make the report to a law enforcement agency to commit the offense. A report to anyone will generally suffice under this section.

Cross Reference:

Knowingly

Related Offense:

False reports ¶12.9

12.12 Missing Persons (§43.400)**Introduction:**

NOTE: A missing person is defined by statute as a person missing that (1) Is physically or mentally disabled to the degree that the person is dependent upon an agency or another individual; (2) Is missing under circumstances indicating that the missing person's safety may be in danger; (3) Is missing under involuntary or unknown circumstances; subject to the provisions of (1), (2), (4), (5), and (6) of this paragraph; (4) Is a child or juvenile runaway from the residence of a parent, legal guardian, or custodian; (5) Is a child and is missing under circumstances indicating that the person was or is in the presence of or under the control of a party whose presence or control was or is in violation of a permanent or temporary court order and fourteen or more days have elapsed, during which time the party has failed to file any pleading with the court seeking modification of the permanent or temporary court order; (6) Is missing under circumstances indicating that the person was or is in the presence of or under the control of a party whose presence or control was or is in violation of a permanent or temporary court order and there are reasonable grounds to believe that the person may be taken outside of the United States;

A law enforcement officer who obtains a report of a missing person shall immediately have the identifying characteristics of the missing person and other relevant information entered into the Missouri Uniform Law Enforcement System (MULES) and the National Crime Information Center (NCIC) system with messages to other law enforcement agencies who may come in contact with, or be of assistance, in locating the missing person.

If the missing person is a juvenile under 17 years of age, the information should also be reported to the Missouri State Highway Patrol which maintains a centralized file for exchange of information.

12.13 False Missing Person Report (§43.405)
Class A Misdemeanor

Elements:

A person commits the offense of making a false missing person report if (s)he:

1. knowingly
2. a. makes a false report; OR
- b. makes a false statement in such report
3. of a missing person
4. to a law enforcement agency.

Comments:

This is an aggravated false report statute, which carries a higher penalty than other false reports carry. The defendant may retract the false statement or report prior to a law enforcement officer taking action in reliance on the statement and by so doing have a defense to the offense.

Cross Reference:

Knowingly
Law enforcement officer

Related Offenses:

False report ¶12.9

12.14 False Crime Victim's Compensation Claim (§595.045(10))
Class A Misdemeanor

Elements:

A person commits the offense of making a false crime victim's compensation claim if (s)he:

1. knowingly makes
2. a fraudulent claim or false statement
3. in connection with a crime victim's compensation claim.

NOTE: Law enforcement officers should be aware that a victim of an offense who suffers personal injury or a dependent of a victim that dies as a direct result of an offense may seek compensation for losses by filing a claim with the Division of Worker's Compensation. Police officers can advise victims that such funds are available. A false claim is an offense under this section

12.15 Tampering with Physical Evidence (§575.100)
Penalty Varies (See Below)

Elements:

A person commits the offense of tampering with physical evidence if (s)he:

1. alters, destroys, suppresses, or conceals any record, document, or thing with purpose to impair its verity, legibility, or availability in any official proceeding or investigation; OR
2. makes, presents, or uses any record, document, or thing, knowing it to be false, with a purpose to mislead a public servant who is or may be engaged in any official proceeding.

Penalty:

Tampering with Physical Evidence is a Class E Felony if the actor impairs or obstructs the prosecution or defense of a felony; it is a Class A Misdemeanor in all other cases.

Comments:

Tampering with physical evidence forbids tampering with or concealing evidence for the purpose of impairing its usefulness in an official proceeding or investigation. The second section deals with presenting and using false documents with the purpose to mislead public servants.

12.16 Tampering with a Public Record (§575.110)
Class A Misdemeanor

Elements:

A person commits the offense of tampering with a public record if, with the purpose to impair the verity, legibility or availability of a public record:

1. (s)he knowingly makes a false entry in or falsely alters any public record; OR
2. knowing (s)he lacks authority to do so, he destroys, suppresses, or conceals any public record.

Comments:

"Public record" is defined in (§575.010(7)), as documents which a public servant is required by law to keep. Tampering with any other public document is not an offense under this section, although it could be a violation of §575.100, tampering with physical evidence.

12.17 Failing to Expunge Arrest Information Which Has Been Ordered Expunged (§610.125)
Class B Misdemeanor

Elements:

A person commits the offense of failing to expunge arrest information which has been ordered expunged if (s)he:

1. a. knowingly fails to
b. expunge; OR
c. obliterate; OR
2. a. releases
b. arrest information which has been ordered expunged pursuant to this section.

12.18 Using Arrest Information that has been Ordered Expunged for Financial Gain (§610.125)
Class E Felony

Elements:

A person commits the offense of using arrest information that has been ordered expunged for financial gain if that person:

1. knowing that the records have been ordered expunged
2. uses arrest information for financial gain.

12.19 False Impersonation (§575.120)
Penalty Varies (See Below)

Elements:

A person commits the offense of false impersonation if (s)he:

1. falsely represents himself/herself to be a public servant with purpose to induce another to submit to his/her pretended official authority or to rely upon his/her pretended official acts; AND
- a. performs an act in that pretended capacity; OR

- b. causes another to act in reliance upon his/her pretended official authority; OR
- 2. falsely represents himself/herself to be a person licensed to practice or engage in any profession for which a license is required by the laws of this state with the purpose to induce another to rely upon such representation; AND
 - a. performs an act in that pretended capacity; OR
 - b. causes another to act in reliance upon such representation.

Penalty:

False Impersonation is a Class A Misdemeanor if the person falsely represents himself/herself to be a law enforcement officer; it is a Class B Misdemeanor-in all other cases.

Comments:

Under this section anyone who impersonates a law enforcement officer, public servant, or licensed professional with the purpose that his/her impersonation be relied on by another and who performs an act while playing that role is guilty of an offense. Public servants and licensed professionals were included because the potential harm from impersonation of either can be great. This section requires the suspect to intend that his/her impersonation be relied on.

12.20 Simulating Legal Process (§575.130)
Class B Misdemeanor**Elements:**

A person commits the offense of simulating legal process if:

- 1. with the purpose to mislead the recipient and cause him/her to act in reliance thereon
- 2. (s)he delivers or causes to be delivered
 - a. a request for the payment of money on behalf of any creditor that in form and substance simulates any legal process issued by any court of this state; OR
 - b. any purported summons, subpoena, or other legal process knowing that the process was not issued or authorized by any court.

NOTE: This section does not apply to a subpoena properly issued by a notary public.

Comments:

This section makes it clear that, as long as a subpoena is properly issued by a notary public the delivery of such subpoena will not constitute the offense of simulating legal process, even if it was not authorized by any court. Any other type of unauthorized legal process, which the suspect delivered with the purpose to mislead the recipient and to cause him/her to rely on it will be the type of simulation of legal process which this section prohibits and penalizes.

12.21 Filing a Nonconsensual Common Law Lien (§575.133)
Class B Misdemeanor

Elements:

No person shall file a nonconsensual common law lien.

A nonconsensual common law lien is a document that purports to assert a lien against the assets, real or personal, of any person and that, regardless of any self-description:

1. Is not expressly provided for by a specific state or federal statute
2. Does not depend upon the consent of the owner of the property affected or the existence of a contract for its existence; AND
3. Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

Note that a filing officer (secretary of state, recorder of deeds, circuit clerk or other public official authorized to accept documents for filing) acting in the scope of his or her employment is not covered by this act.

12.22 Failure to Appear (§544.665)
Penalty Varies (See Below)

Elements:

A person commits the offense of failure to appear if:

1. (s)he knows his/her appearance before any court is required at a criminal matter against him or her, and
2. Fails to appear.

Penalty:

The penalty is a class E felony if the underlying criminal matter for which (s)he did not appear is a felony. The penalty is a class A misdemeanor if the underlying

criminal matter for which (s)he did not appear is a misdemeanor. The penalty is an infraction if the underlying offense is an infraction.

12.23 Resisting or Interfering with Arrest (§575.150)
Penalty Varies (See Below)

Elements:

A person commits the offense of resisting arrest if:

1. (s)he (knows) that a law enforcement officer is making
 - a. an arrest; OR
 - b. attempting to lawfully detain or stop an individual or vehicle; OR
2. (s)he reasonably should know that a law enforcement officer is making
 - a. an arrest; OR
 - b. attempting to lawfully detain or stop an individual or vehicle; AND
3. for the purpose of preventing the officer from effecting the arrest, stop or detention, (s)he
4. resists the arrest, stop or detention himself/herself by the use of or threat of violence, physical force, or flight from the officer; OR
5. interferes with the arrest, stop or detention of another by using or threatening the use of violence, physical force, or physical interference.

Penalty:

Class E Felony-if resisting or interfering with arrest for a felony

Class E Felony-if resisting an arrest or lawful detention by fleeing in such a manner that the person fleeing creates a substantial risk of serious physical injury or death to any person

Class E Felony – if arresting on a “failure to appear” warrant on a felony case

Class A Misdemeanor-all other cases

Comments:

This section applies to arrests, stops or detentions with or without warrants and to arrests, stops or detentions for any offense, infraction or ordinance violation. The Code also expressly applies to arrests with and without warrants.

The section also precludes the defendant from asserting unlawful arrest as a defense to resisting arrest. The Code forbids resisting both lawful and unlawful arrest.

Examples:

1. Oliver, a police officer, attempts to arrest Donald, but Donald flees. Donald is guilty of resisting arrest, punishable as a class A misdemeanor unless: (1) Oliver was attempting to arrest Donald for a felony, or (2) Donald creates a substantial risk of serious physical injury or death to another, in which case Donald is guilty of a class E felony of resisting arrest.
2. Same facts as (1) except Donald strikes Oliver. Donald is guilty of resisting arrest. It is a class E felony if the arrest was to be for a felony. It is a misdemeanor if the arrest was for a misdemeanor.
3. Bob is standing near Donald when Oliver, a police officer, attempts to arrest Donald for a felony. Bob tackles Oliver, giving Donald time to escape. Bob is guilty of interfering with an arrest for a felony; punishable as a class E felony.

12.24 Disarming a Peace Officer or Correctional Officer

(§575.153)

Class D Felony**Elements:**

A person commits the offense of disarming a peace officer or correctional officer if:

1. (s)he knowingly removes a firearm or other deadly weapon from the person of a peace officer or correctional officer, AND
2. The peace officer or correctional officer was acting within the scope of his or her official duties, AND
3. The defendant knew or reasonably should have known that the person s(he) disarmed was a peace officer or correctional officer.

Note: an individual is not guilty under this statute if the peace officer or correctional officer they disarmed was engaged in an incident involving felonious conduct at the time of the disarmament.

12.25 Misusing a Laser Pointer (§574.110)**Class A Misdemeanor**

A person commits the crime of misusing a laser pointer if (s)he knowingly directs a light from a laser pointer at a uniformed safety officer, including a peace officer as defined under §590.010, security guard, firefighter, emergency medical worker, or other uniformed municipal, state, or federal officer.

Note:

A laser pointer is a device that emits a visible light amplified by the stimulated emission of radiation.

12.25 Interference with Legal Process (§575.160)
Class B Misdemeanor

Elements:

A person commits the offense of interference with legal process if:

1. knowing any person is authorized by law to serve process; AND
2. for the purpose of preventing such person from effecting the service of any process
3. (s)he interferes with or obstructs such person.

"Process" includes any writ, summons, subpoena, warrant other than an arrest warrant, or other process or order of a court.

Comments:

This is basically the same as the former Missouri §557.210, except that now interference with the service of an arrest warrant is included in §575.150, the resisting arrest section.

A person must actually interfere with or obstruct the person who is serving process to commit this offense. Merely avoiding civil process is not an offense under this section.

12.26 Refusing to Make an Employee Available for Service of Process (§575.170)
Class C Misdemeanor

Elements:

A person commits the offense of refusing to make an employee available for service of process when an officer calls at a business establishment to serve process on an employee during his/her working hours and:

1. the employee or agent in charge
2. knowingly refuses to assist an officer authorized by law to serve process
3. by failing or refusing to make the employee available for service of process.

Comments:

This section applies to any employer or agent in charge of a business establishment. If the agent is the one refusing to make the employee available, this agent is guilty of the offense.

Cross Reference:

Knowingly
Process

Related Offense:

Interference with legal process ¶12.25

12.27 Failure to Execute an Arrest Warrant (§575.180)
Penalty Varies (See Below)

Elements:

The offense of failing to execute an arrest warrant is committed if:

1. for the purpose of allowing a person charged with or convicted of an offense to escape
2. a law enforcement officer fails to execute
 - a. an arrest warrant, capias; OR
 - b. other lawful process ordering apprehension or confinement of a person
3. which (s)he is authorized and required to execute.

Note: It is an affirmative defense under this section that the defendant law enforcement officer acted under exigent circumstances in failing to execute an arrest warrant on a person who has committed a misdemeanor offense under Chapter 301, 302, 304, or 307, or a misdemeanor traffic offense in another state.

Penalty:

Failure to Execute an Arrest Warrant is a Class E Felony if the warrant was for a felony offense. It is a Class A Misdemeanor if the arrest warrant for an offense than a felony.

Comments:

This section covers the failure to execute a warrant, which orders the officer to arrest or confine a person if the officer fails to execute it in order to allow escape.

Cross References:

With purpose
Process
Law enforcement officer
Confinement

12.28 Refusal to Identify as a Witness (§575.190)
Class C Misdemeanor

Elements:

A person commits the offense of refusal to identify as a witness if:

1. (s)he knows (s)he has witnessed a portion, or all of an offense; OR
2. (s)he knows (s)he has witnessed an incident resulting in physical injury or substantial property damage; AND
3. upon the demand of a law enforcement officer engaged in the performance of his/her duties
4. (s)he refuses to report or falsely reports his/her name and present address.

Comments:

This section imposes a limited duty on persons who witness any portion of an offense or property damage to identify themselves to law enforcement officers after proper demand. The purpose of this statute is to facilitate police investigations and to encourage those with information about an offense to surrender it.

Cross Reference:

Knowingly
Physical injury

12.29 Escape from Commitment or Detention or Conditional Release (§575.195)
Class E Felony

Elements:

A person commits the offense of escape from commitment, detention or release if (s)he:

1. has been committed to a state mental hospital

2. under the provisions of:
 - a. §§552.010-552.080; OR
 - b. §§632.480-632.513; OR
3. has been ordered to be taken into custody, detained, or held pursuant to §§632.480-632.513; OR
4. as provided in §632.475, has been committed to the department of mental health as a criminal sexual psychopath under statutes in effect before August 13, 1980; OR
5. has been granted a conditional release under the provisions of §§552.010-552.080 or §§632.480-632.513
6. and (s)he escapes from commitment, detention or conditional release.

Comments:

This section applies to offenders who escape after being committed by court order to a state mental hospital. Sections 632.480-632.513 deal with sexually violent predators. Sections 552.010-552.080 deal with the offender whose criminal conduct is due to a mental disease or defect which is severe enough that (s)he is not responsible for his/her conduct. If a person is in a mental hospital under a court order for other than one of the reasons cited above, the offense will not be escape from commitment. It will be either escape from confinement (§575.210) or escape from custody (§575.200).

Cross References:

§§202.700-§202.770
§§552.010-§552.080
Incapacitated §556.061(13)

**12.30 Escape from Custody or Attempted Escape from Custody
(§575.200)**

Penalty Varies (See Below)

Elements:

A person commits the offense of escape from custody or attempted escape from custody if (s)he:

1. is being held
2. in custody
3. after arrest
4. for any offense or violation of probation or parole, AND
 - a. (s)he escapes from custody; OR
 - b. (s)he attempts to escape from custody.

Penalty:

Escape from custody is a class A misdemeanor unless. However, it will be:

1. a class A felony if:
 - a. the offense is committed
 - b. by means of
 - i. a deadly weapon; OR
 - ii. a dangerous instrument; OR
 - iii. by holding any person hostage; OR
2. a class E felony if:
 - a. the person escaping or attempting to escape
 - b. is under arrest for a felony.

Comments:

A person is in custody when (s)he has been arrested but has not been delivered to a place of confinement. Custody is that period of time from arrest to arrival at the first place of confinement. If a person is arrested, placed in confinement, and then is subsequently transferred to another place of confinement, (s)he is deemed to be in confinement and not custody during the period of transfer.

This section does not specifically require the custody, confinement, or imprisonment be "lawful." If a person escapes after being placed in custody pursuant to an unlawful arrest, the fact of the illegal arrest may be a mitigating factor but may not be a complete defense.

Note that the Code provisions against escape apply only to persons charged with offenses. Thus, the escape of a person being held on a municipal ordinance violation or an infraction is not a violation of these sections.

Example:

The suspect is arrested for robbery and taken to the station house for booking. On his/her way up the front steps, (s)he breaks loose and escapes. Since (s)he was arrested for a felony and (s)he has not yet been placed in confinement (in the station house), the escape from custody is a class E felony.

Cross References:

Confinement

Offense

Custody

Dangerous instrument

Deadly weapon

Misdemeanor

Place of confinement

**12.31 Escape from Confinement or Attempted Escape from
Confinement (§575.210)**
Penalty Varies (See Below)

Elements:

A person commits the offense of escape from confinement if (s)he:

1. while being held
2. in confinement
3. after
 - a. an arrest for any offense; OR
 - b. a conviction and while serving a sentence for any offense; OR
4. while at an institutional treatment center operated by the Department of Corrections as a condition of probation or parole.
5. escapes or attempts to escape from confinement.

Penalty:

Normally, escape from confinement is a class E felony. However, it will become:

1. a class A felony if:
 - a. the escape is affected or attempted
 - b. by means of
 - i. a deadly weapon; OR
 - ii. a dangerous instrument; OR
 - iii. holding a person hostage;
2. a class B felony if:
 - a. the escape is affected or attempted
 - b. from the Missouri Department of Corrections
3. a class D felony if:
 - a. the escape or attempt to escape
 - b. is facilitated by:
 - i. striking any person; OR
 - ii. beating any person.

Comments:

This section applies only when the prisoner is in confinement as distinguished from those situations where the prisoner is in custody.

Examples:

1. The suspect is arrested for robbery, and the issue of his mental competency arises. The court orders him to a state mental hospital for a mental examination. While at the hospital, he escapes. He may be guilty of escape from confinement, which would be a class D felony here since he was confined for a felony and there was no aggravation (weapons or hostages).
2. While serving a ten-year sentence for burglary in the Department of Corrections, the inmate's sanity becomes questionable, and he is sent to a state mental hospital for an examination. In the process of escaping, the inmate stabs a member of the hospital staff with a knife. The inmate was still in confinement while at the hospital since he was not committed pursuant to Chapter 202 or Chapter 552. He is guilty of escape from confinement, and since his escape was affected by use of a deadly weapon, the offense is a class A felony.
3. Donald is serving a ten-month sentence in the county jail for misdemeanor stealing. He falls and fractures his left wrist and a guard takes him to the county hospital for treatment. After his left wrist is attended to, he strikes the guard with his right fist, and escapes. Donald was in confinement when he escaped since he was under guard by a person who had the legal duty to transport him from the place of confinement to the hospital. Although he was confined for a misdemeanor, his escape is a class C felony since it was effected by striking the guard.
4. Donald is serving a five-year sentence in the Department of Corrections for burglary. A hearing on his motion for post-conviction relief is granted, and he is taken under guard to the Circuit Court. During a recess, he manages to escape from the courthouse. He has escaped from confinement, punishable as a class D felony.
5. Donald is being escorted by bailiffs though not physically restrained or handcuffed, from the courthouse to jail after being convicted, when he ran, broke a glass door, and left the courthouse. Donald was a person lawfully imprisoned or detained in county jail at the time of his escape-a class D felony.

Cross References:

Confinement
Offense
Custody
Dangerous instrument
Deadly weapon
Misdemeanor
Place of confinement

12.32 Failure to Return to Confinement (§575.220)**Penalty Varies (See Below)****Elements:**

A person commits the offense of failure to return to confinement if (s)he:

1. purposely fails
2. to return
3. to confinement
4. when required to do so
5. while serving
 - a. a sentence for any offense under a work-release program; OR
 - b. under sentence of any offense to serve a term for confinement which is not continuous; OR
 - c. any other type sentence for any offense wherein (s)he is temporarily permitted to go at large without guard.

NOTE: This section does not apply to those persons who are free on bond, bail, recognizance (personal or otherwise), or probation or parole.

Penalty:

Failure to return to confinement is usually a class C misdemeanor. However, it is:

1. a class E felony if
 - a. the sentence being served
 - b. is to the Missouri Department of Corrections; OR
2. a class A misdemeanor if
 - a. the sentence is being served
 - b. by confinement in the county jail
 - c. on conviction of a felony.

Cross References:

Confinement

Offense

Misdemeanor

Place of confinement

Purposely

12.33 Aiding Escape of a Prisoner (§575.230)
Penalty Varies (See Below)

Elements:

A person commits the offense of aiding the escape of a prisoner if (s)he:

1. a. introduces into any place of confinement
 - i. a deadly weapon; OR
 - ii. a dangerous instrument; OR
 - iii. another thing adapted or designed for use in making an escape
- b. with the purpose
 - i. of facilitating the escape of any prisoner confined therein; OR
 - ii. of facilitating the commission of any other offense; OR
2. a. assists or attempts to assist
- b. any prisoner being held in custody or confinement
- c. for the purpose
- d. of effecting the prisoner's escape from custody or confinement.

Penalty:

Normally, aiding escape of a prisoner is a class A misdemeanor. However, it is a Class B felony if:

1. a. escape is aided
- b. by introducing into a place of confinement
 - i. a deadly weapon; OR
 - ii. a dangerous instrument; OR
2. a. a person aides the escape of a prisoner
- b. being held in custody or confinement
- c. on the basis of a felony charge or conviction.

Comments:

The Code section applies to aiding the escape of a prisoner in custody or confinement on a charge of any offense or serving a sentence after conviction of any offense.

Note that there is no requirement that an escape actually occur in order for there to be a conviction for aiding escape.

Cross References:

Dangerous instrument

Deadly weapon

Confinement
Custody
Offense
Place of confinement
Purpose

12.34 Permitting Escape (§575.240)
Penalty Varies (See Below)**Elements:**

A public servant who is authorized and required by law to have charge of any person charged or convicted of any offense, commits the offense of permitting escape if:

1. (s)he
 - a. knowingly suffers, allows, or permits
 - b. any
 - i. deadly weapon; OR
 - ii. dangerous instrument; OR
 - iii. thing adapted or designed for use in making an escape
 - c. to be introduced into or allowed to remain in
 - d. any place of confinement
 - e. in violation of laws, regulations, or rules governing operation of a place of confinement; OR
2. (s)he
 - a. knowingly suffers, allows, or permits
 - b. a person in custody or confinement
 - c. to escape.

Penalty:

If a dangerous instrument or deadly weapon is introduced this offense is a class B felony. Otherwise, this offense is a class E felony.

Cross References:

Confinement
Offense
Custody
Dangerous instrument
Deadly weapon
Knowingly
Public servant
Place of confinement

12.35 Disturbing a Judicial Proceeding (§575.250)
Class A Misdemeanor

Elements:

A person commits the offense of disturbing a judicial proceeding if (s)he:

1. disrupts or disturbs a judicial proceeding by
 - a. participating in an assembly, AND
 - b. calling aloud; OR
 - c. shouts; OR
 - d. holds or displays a placard or sign containing written or printed matter concerning the conduct of the judicial proceeding, or the character of a judge, juror, attorney, party, or witness engaged in such proceeding, or calling for any specified action or determination by such judge, attorney, juror, party, or witness in connection with such proceeding
2. with a purpose to intimidate a judge, attorney, juror, party, or witness and thereby to influence a judicial proceeding.

Comments:

This section is designed to prevent disruption of trials and other judicial proceedings.

Cross Reference:

Purpose

12.36 Tampering with Judicial Proceeding (§575.260)
Class D Felony

Elements:

A person commits the offense of tampering with a judicial proceeding if (s)he:

1. acting with a purpose to influence the official action of a judge, juror, special master, referee, arbitrator, state prosecutor or circuit attorney, state assistant prosecuting or circuit attorney, or the attorney general in a judicial proceeding
2. threatens or causes harm to any person or property; OR
3. engages in conduct reasonably calculated to harass or alarm such official or juror; OR
4. offers, confers, or agrees to confer any benefit, direct or indirect, upon such official or juror.

Under the Code "juror" includes persons who have been summoned as prospective jurors in a grand or petit jury.

Comments:

This section prohibits specified kinds of attempts to influence judges, referees, masters, arbitrators, and jurors in judicial proceedings by threats, harassment, or bribery.

Cross Reference:

Purpose

12.37 Tampering with a Witness (§575.270)
Penalty Varies (See Below)

Elements:

A person commits the offense of tampering with a witness if:

1. for the purpose of inducing a witness or a prospective witness in a judicial proceeding to
 - a. disobey a subpoena or other legal process; OR
 - b. absent himself/herself; OR
 - c. avoid subpoena or other legal process; OR
 - d. withhold evidence, information or documents; OR
 - e. testify falsely; and (s)he
2. threatens or causes harm to any person or property; OR
3. uses force, threats, or deception; OR
4. offers, confers, or agrees to confer any benefit, direct or indirect, upon such witness.

Penalty:

Tampering with a Witness is a Class D Felony if the witness is involved in a felony prosecution or if the purpose of tampering is to induce the witness to testify falsely. Otherwise, it is a Class A Misdemeanor

Comments:

This section prohibits bribery and threats for the purpose of influencing the conduct or testimony of witnesses.

Cross Reference:

Purposely

12.38 Tampering with a Victim (§575.270)
Penalty Varies (See Below)

Elements:

A person commits the offense of tampering with a victim if (s)he:

1. purposely
 - a. prevents or dissuades; OR
 - b. attempts to prevent or dissuade
2. any person
 - a. who has been a victim of any offense; OR
 - b. who is acting on behalf of a victim
3. a. from making a report of the victimization (offense); or
b. or to assist in the prosecution; OR
c. from arresting or seeking the arrest of any person in connection with the offense against the victim.

Penalty:

Tampering with a Victim is a Class D Felony if the victim is involved in a felony prosecution, otherwise it is a Class A Misdemeanor.

Comments:

This section covers the common situation of where a defendant who is out on pretrial release (either personally or by encouraging another) seeks to bribe, harass, or threaten his/her victim. This section also covers the situation where a perpetrator has not yet been identified or arrested and no offense has been reported due to threats made against the victim.

A police officer who has knowledge that a victim is being threatened should contact the Department of Public Safety who can arrange for the security of witnesses, victims, and their families. Temporary substitute housing can be made available. The prosecuting attorney can also be contacted to apply for a court order restraining the defendant or others from going near the victim. A defendant who commits this offense not only is subject to an additional sentence but also will have his/her pretrial release promptly revoked.

Pretrial depositions of essential witnesses are now provided for to reduce the incentive of tampering with a victim.

12.39 Acceding to Corruption (§575.280)
Penalty Varies (See Below)

Elements:

A person commits the offense of acceding to corruption if:

1. a. (s)he is a judge, juror, special master, referee, or arbitrator; AND
b. knowingly solicits, accepts, or agrees to accept
c. any direct or indirect benefit
d. on the representation or understanding that it will influence his/her official action in a judicial proceeding pending before such official or juror; OR
2. a. (s)he is a witness or prospective witness in any official proceeding; AND
b. knowingly solicits, accepts, or agrees to accept
any direct or indirect benefit
c. on the representation or understanding that (s)he will disobey a subpoena or other legal process, withhold evidence, information, or documents, or testify falsely.

Penalty:

A violation of part (1) is a class C felony. A violation of part (2) is a class D felony if it is a felony trial or the witness agrees to testify falsely. Otherwise, it is a class A misdemeanor.

Cross References:

Knowingly
Official proceeding

Related Offense:

The person who attempts to influence the conduct of a witness or official may be charged with tampering with a judicial proceeding or tampering with a witness.

12.40 Improper Communication (§575.290)
Class B Misdemeanor

Elements:

A person commits the offense of improper communication if (s)he:

1. communicates directly or indirectly
2. with any juror, special master, referee, or arbitrator in a judicial proceeding

3. in a manner not part of the proceedings in the case
4. for the purpose of influencing the official action of such person.

Comments:

This section prohibits contact outside of the regular proceedings of the case with jurors, referees, special masters, or arbitrators for the purpose of influencing their official conduct. Communications to judges are not covered by this section because judges can deal with this type of conduct with their contempt powers.

Cross Reference:

Purposely

12.41 Misconduct by a Juror (§575.300)
Class A Misdemeanor

Elements:

A person commits the offense of misconduct by a juror if:

1. a. (s)he is a juror and he
 - b. knowingly promises or agrees
 - c. prior to the submission of the cause to the jury for deliberation
 - d. to vote for or agree to a verdict for or against any party in a judicial proceeding; OR
2. a. (s)he is a juror and he
 - b. knowingly receives from anyone
 - c. any paper, evidence, or information
 - d. in relation to any judicial proceeding for the trial of which (s)he has been or may be sworn
 - e. without the authority of the court or officer before whom the proceeding is pending
 - f. and does not immediately disclose the same to such court or officer.

Comments:

This section prohibits jurors and prospective jurors from knowingly receiving information about the case without the authority and knowledge of the court. It also prohibits them from knowingly promising or agreeing to vote for a certain result before the case is submitted to the jury. The term "juror" includes persons summoned as prospective jurors.

Cross Reference:

Knowingly

12.42 Misconduct in Selecting or Summoning a Juror (§575.310)
Class B Misdemeanor

Elements:

A person commits the offense of misconduct in selecting or summoning a juror if (s)he:

1. is a public servant authorized by law to summon or select jurors and (s)he
2. knowingly acts unfairly, improperly, or not impartially
3. in selecting or summoning any person or persons to be a member or members of a jury.

Comments:

This section provides a misdemeanor penalty for officials authorized to select jurors or venire men, and who knowingly select the jurors improperly.

Cross Reference:

Knowingly

12.43 Misconduct in Administration of Justice (§575.320)
Class A Misdemeanor

Elements:

A public servant, acting in his/her public capacity or under color of his/her office or employment, commits the offense of misconduct in administration of justice if:

1. a. (s)he is charged with the custody of
b. any person accused or convicted of
c. any offense or municipal ordinance violation; AND
d. (s)he coerces, threatens, abuses, or strikes such person
e. for the purpose of securing a confession from him/her; OR
2. a. (s)he knowingly seizes or levies upon any property; OR
b. knowingly dispossesses anyone of any lands or tenements
c. without due and legal process
d. or other lawful authority; OR
3. a. (s)he is a judge; AND
b. knowingly accepts
c. a plea of guilty

- d. from any person charged with a violation of a statute or ordinance
 - e. at any place other than at the place provided by law for holding court by such judge; OR
- 4. a. (s)he is a jailer or keeper of a county jail; AND
 - b. knowingly refuses to receive in the jail under his/her charge
 - c. any person lawfully committed to such jail
 - d. on any criminal charge or any criminal conviction by any court of this state; OR
 - e. on any warrant and commitment or capias on any criminal charge issued by any court of this state; OR
- 5. a. (s)he is a law enforcement officer and violates the provisions of §544.170
 - b. by knowingly
 - i. refusing to release any person in custody who is entitled to such release; OR
 - ii. refusing to permit a person in custody to see and consult with counsel or other persons; OR
 - iii. transferring any person in custody to the custody or control of another, or to another place, for the purpose of avoiding the provisions of §544.170; OR
 - iv. preferring against any person in custody a false charge for the purpose of avoiding the provisions of §544.170.

Comments:

Only a public servant, acting in his/her official capacity or under color of his/her office, can violate this section. "**Color of his/her office**" means that the official acts in such a way that (s)he thinks (s)he is carrying out his/her duties, or (s)he leads other persons to believe that (s)he is acting under authority of his/her office.

12.44 Bribery of a Public Servant (§576.010)
Class E Felony**Elements:**

A person commits the offense of bribery of a public servant if (s)he:

- 1. knowingly offers, confers, or agrees to confer
- 2. any direct or indirect benefit
- 3. upon any public servant
- 4. in return for
 - a. the recipient's official vote, opinion, recommendation, judgment, decision, or exercise of discretion as a public servant; OR

- b. the recipient's violation of a known legal duty as a public servant.

Comments:

The Code specifically eliminates the defense that the bribed person was, for some reason, unqualified to act in the desired fashion. Thus, the fact the public servant bribed had not assumed office at the time the bribe is offered is not relevant. Of course, the offer need not be accepted, and the offense is committed even if the public servant refuses the bribe.

Example:

Donald offers a police officer \$20.00 if the officer will issue a warning rather than a traffic citation. Donald has committed the offense of bribery of a public servant by offering to confer a benefit on a public servant in return for his exercise of discretion in issuing a warning rather than a citation. Had he asked the officer to merely issue a warning, no bribery would have occurred since no benefit was offered.

Cross References:

Public servant

Public servant acceding to corruption

Tampering with a judicial proceeding

Knowingly

12.45 Public Servant Acceding to Corruption (§576.020)**Class E Felony****Elements:**

A public servant commits the offense of acceding to corruption if (s)he:

1. knowingly solicits, accepts, or agrees to accept
2. any direct or indirect benefit
3. in return for
 - a. his/her official vote, opinion, recommendation, judgment, decision, action, or exercise of discretion as a public servant; OR
 - b. his/her violation of a known legal duty as a public servant.

Related Offense:

Bribery of a public servant

¶12.44

12.46 Obstructing Government Operations (§576.030)
Class B Misdemeanor

Elements:

A person commits the offense of obstructing government operations if (s)he:

1. purposely obstructs, impairs, hinders, or perverts the performance
2. of a governmental function
3. by using or threatening violence, force, or other physical interference or obstacle.

Comments:

The offense is designed to cover intentional interference with governmental functions.

Cross Reference:

Purposely

12.47 Official Misconduct (§576.040)
Class A Misdemeanor

Elements:

A public servant, while acting in his/her public capacity or under color of his/her office or employment, commits the offense of official misconduct if:

1. a. (s)he knowingly discriminates on the basis of race, creed, color, sex, or national origin
b. against any employee or applicant for employment
c. where the employee or applicant possesses adequate training and educational qualifications for the position in question; OR
2. a. (s)he knowingly demands or receives
b. any fee or reward that is not due, or that is more than due, or before it is due
c. for the execution of any official act or performance of a duty imposed by law or the terms of his/her employment; OR
3. (s)he knowingly collects taxes when none are due or exacts or demands more than is due; OR
4. a. (s)he is a city or county treasurer, clerk, or other officer of a city or county, or judge of a municipal or county court; AND

- b. (s)he knowingly orders the payment of, pays over, or draws a warrant to pay any money
 - c. for any purpose other than the specific purpose for which the same was assessed, levied, and collected
 - d. unless it has become impossible to use the money for that purpose; OR
- 5. a. (s)he is an officer or employee of any court; AND
 - b. knowingly charges, collects, or receives less fee for his/her services than is provided by law; OR
- 6. a. (s)he is an officer or employee of any court; AND
 - b. knowingly purchases, buys, or trades for any
 - c. fee taxed or taxable as costs in any court in this state, or county warrant, at less than par value which may be by law due or become due to any person by or through any such court; OR
- 7. a. (s)he is a county officer, deputy, or employee; AND
 - b. knowingly traffics for or purchases at less than par value or speculates in
 - i. any court warrant issued by order of the county court of his/her county; OR
 - ii. any claim or demand held against his/her county.

Cross References:

Public servant

Knowingly

12.48 Misuse of Official Information (§576.050)
Class A Misdemeanor

Elements:

A public servant commits the offense of misuse of official information if:

- 1. in contemplation of official action by himself/herself or by a governmental unit (s)he is associated with; OR
- 2. in reliance on information not available to the public, that (s)he has access to in his/her official capacity
- 3. (s)he knowingly
 - a. acquires a pecuniary interest in any property transaction or enterprise affected by the information or official action; OR
 - b. speculates or wagers on the basis of the information or official action; OR
 - c. aids, advises, or encourages someone else to do any of the foregoing with the purpose of conferring a pecuniary benefit on any person.
- 4. A person commits the offense of misuse of official information if (s)he knowingly or recklessly obtains or discloses information from the

Missouri Uniform Law Enforcement System (MULES) or the National Crime Information Center System (NCIC), or any other criminal justice information sharing system that contains individually identifiable information for private or personal use, or for a purpose other than in connection with their official duties and performance of their job.

12.49 Failure to Give a Tax List (§576.060)
Infraction

Elements:

A person commits the offense of failure to give a tax list if:

1. when requested to do so by a government assessor
2. (s)he knowingly fails to give a true list of all his/her taxable property; OR
3. (s)he knowingly fails to take and subscribe an oath or affirmation of his/her tax list as required by law.

Cross References:

Knowingly
Infraction

12.50 Treason (§576.070)
Class A Felony

Elements:

A person commits the offense of treason if (s)he:

1. owes allegiance to the State; AND
2. (s)he purposely levies war against the State; OR
3. adheres to its enemies by giving them aid and comfort.

Comments:

This statute requires that one or more overt acts must be alleged in the information or indictment and that at least two witnesses to the same overt act or a confession in open court is required for conviction. There are no reported cases under the pre-Code statute.

12.51 Assault on a Police Animal (§575.353)
Penalty Varies (See Below)

Elements:

A person commits the offense of assault on a police animal when such person:

1. knowingly
 - a. attempts to kill or disable; OR
 - b. causes or attempts to cause serious physical injury
2. to a police animal
3. when that animal is
 - a. involved in a law enforcement investigation, apprehension, tracking, or search, OR
 - b. in the custody of or under the control of a law enforcement officer, Department of Corrections officer, municipal police department, fire department or a rescue unit or agency.

Penalty:

The offense of assault on a police animal is a class C misdemeanor, unless the assault results in the death of such animal or disables such animal to the extent it is unable to be utilized as a police animal, in which case it is a class E felony.

Comments:

§575.353 was enacted to provide special protection for animals utilized for law enforcement purposes. “**Police animal**” is defined under §575.010(7) to mean “a dog, horse or other animal used in law enforcement or a correctional facility, or by a municipal police department, fire department, search and rescue unit or agency, whether the animal is on duty or not on duty. The term shall include, but not be limited to, accelerant detection dogs (used in arson investigations), bomb detection dogs, narcotic detection dogs, search and rescue dogs and tracking animals.”

**12.52 Signal or direction of law enforcement or firefighter, duty to stop, motor vehicle operators and riders of animals—violation
 (§575.145)**

Class A Misdemeanor

Elements:

It shall be the duty of the operator or driver of any vehicle or the rider of any animal traveling on the highways of this state to stop on signal of any law enforcement officer or firefighter and to obey any other reasonable signal or direction of such law enforcement officer or firefighter given in directing the movement of traffic on the highways. The offense of willfully failing or refusing to obey such signals or directions or willfully resisting or opposing a law enforcement officer or a firefighter in the proper discharge of his or her duties is a class A misdemeanor.

**12.53 Supporting terrorism--definition of material support—
 penalty (§576.080).**

Class D Felony

Elements:

A person commits the offense of supporting terrorism if (s)he:

1. knowingly provides material support to any organization designated as a foreign terrorist organization pursuant to 8 U.S.C. § 1189, as amended and acts recklessly with regard to whether such organization had been designated as a foreign terrorist organization pursuant to 8 U.S.C. § 1189.
2. For the purpose of this section, "material support" includes currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation and other physical assets, except medicine or religious materials

Chapter 13 **Prostitution** **(§§567.010-567.100)**

13.1 Introduction

The Code enacted **three types** of prostitution offenses: prostitution, patronizing prostitution, and promoting prostitution. The prostitution offense is, of course, aimed at persons who engage in sexual conduct with someone in return for something of value. The offense of patronizing prostitution makes it an offense to pay for a prostitute's services. Finally, a person commits the offense of promoting prostitution if (s)he causes or aids a person to engage in prostitution.

Section 567.090 provides that the "promoting prostitution" offenses (§§567.050-567.070) will preempt any other regulation of the area. Its purpose is to standardize these felony offenses throughout the State. Therefore, cities and towns may not enact ordinances that make conduct in the "promoting prostitution" area subject to a sanction of any kind. Cities and towns may enact and enforce laws prohibiting and penalizing any other conduct subject to criminal or civil sanctions under other provisions of this chapter.

Section 567.110. Any person who pleads guilty to or is found guilty of a violation of §567.020 or §567.030 and who is alleged and proved to be a persistent prostitution offender is guilty of a class E felony.

Section 567.120. Any person arrested for a prostitution-related offense, who has a prior conviction of or has pled guilty to a prior prostitution-related offense, may, within the sound discretion of the court, be required to undergo HIV testing as a condition precedent to the issuance of bond for the offense.

13.2 Chapter Definitions (§567.010)

As used in Chapter 567, the following terms have the meaning indicated. The definition of certain terms (even similar/identical terms) may differ between

chapters (for example, compare the definition of “sexual contact” in §566.010(6) with the definition in §567.010(5)).

Devi ate sexual intercourse: any sexual act involving the genitals of one person and the mouth, hand, tongue, or anus of another person; or any act involving the penetration, however slight, of the penis, the female genitalia, or the anus by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;

Persistent prostitution offender: a person who has been found guilty of two or more prostitution-related offenses;

Prostitution-related offense: any violation of state law for prostitution, patronizing prostitution, or promoting prostitution;

Sexual conduct: sexual intercourse, deviate sexual intercourse, or sexual contact;

Sexual contact: any touching of another person with the genitals or any touching of the genitals or anus of another person or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person or for the purpose of terrorizing the victim;

Sexual intercourse: any penetration, however slight, of the female genitalia by the penis;

Something of value: any money or property, or any token, object or article exchangeable for money or property.

13.3 Prostitution (§567.020)

Penalty Varies (See Below)

Elements:

A person commits the offense of prostitution if (s)he:

1. engages or offers or agrees to engage
2. in sexual conduct
3. with another person
4. in return for something of value
5. to be received by any person.

Note: A person who commits this offense while (s)he is under the age of eighteen may not be certified as an adult or adjudicated as a delinquent for this offense. Any such person must instead be classified as a victim of abuse; and the abuse must be immediately reported to the juvenile officer and to the children's division as required by §210.115 (mandated reporter statute). (§567.020.5)

Penalty:

1. Class B Misdemeanor unless:
2. Offender is alleged and proved to be a persistent prostitution offender, then a class E felony. (§567.110)

3. If the person knew prior to performing the act of prostitution that (s)he was infected with HIV the offense of prostitution is a class B felony. The use of condoms is not a defense to this offense.

Comments:

Sexual conduct occurs when there is:

1. sexual intercourse;
2. deviate sexual intercourse; OR
3. sexual contact.

NOTE: The judge may order a drug and alcohol abuse treatment program for any person found guilty of the class B misdemeanor of prostitution, either after trial or upon a plea of guilty, before sentencing. Upon the successful completion of such program by the defendant, the court may allow the defendant to withdraw the plea of guilty or reverse the verdict and enter a judgment of not guilty.

Example:

Donald enters a massage parlor, and asks for a massage. Dorothy takes him to a room and tells Donald that the "house special" includes a massage involving sexual contact (See ¶13.2). She offers to give him this special massage for \$50.00. Dorothy has committed the offense of prostitution because she has offered to engage in sexual conduct with Donald in return for something of value.

13.4 Patronizing Prostitution (§567.030)

Penalty Varies (See Below)

Elements:

A person commits the offense of patronizing prostitution if:

1. pursuant to a prior understanding (s)he gives something of value to another person as compensation for that person or a third person having engaged in sexual conduct with another person; OR
2. (s)he gives or agrees to give something of value to another person on an understanding that in return therefore that person or another person will engage in sexual conduct with another person; OR
3. (s)he solicits or requests another person to engage in sexual conduct with another person\ in return for something of value.

Penalty:

1. Patronizing prostitution is a class B misdemeanor, unless the individual who the person is patronizing is under the age of eighteen but older than the age of fourteen, in which case the offense is a class E felony.
2. Patronizing prostitution is a class D felony if the individual who the person patronizes is fourteen years of age or younger.
3. If the offender is alleged and proven to be a persistent prostitution offender, patronizing prostitution is a Class E felony. (567.110)

Comments:

It shall not be an affirmative defense that the defendant believed that the person (s)he patronized for prostitution was eighteen years of age or older.

A person can violate this section even if (s)he has not yet had any direct dealings with a prostitute. If (s)he arranges to give something of value to a "pimp" in exchange for a prostitute's services, (s)he will still be guilty of the offense of patronizing prostitution.

Examples:

1. Fred promises Ann that he will marry her if she will engage in sexual conduct with him. Fred has not committed the offense of patronizing prostitution because a promise to marry is not "something of value" according to the statutory definition.
2. Al asks Donald, a pimp, to find a prostitute for him. Al gives Donald \$50.00. Donald agrees to send a prostitute over. Al has committed the offense of patronizing prostitution because he gave something of value to another person (Donald) with the understanding that in return a third person (prostitute) will engage in sexual conduct with him. Donald will be guilty of promoting prostitution in some degree.

13.5 Promoting Prostitution in the Third Degree (§567.070)
Class E Felony

Elements:

A person commits the offense of promoting prostitution in the third degree if (s)he knowingly:

1. causes or aids a person to commit or engage in prostitution; OR
2. procures or solicits patrons for prostitution; OR
3. provides persons or premises for prostitution purposes; OR

4. operates or assists in the operation of a house of prostitution or a prostitution enterprise; OR
5. accepts or receives or agrees to accept or receive something of value pursuant to an agreement or understanding with any person whereby (s)he participates or is to participate in proceeds of prostitution activity; OR
6. engages in any conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

Example:

Donald is employed by the owner of a house of prostitution. His sole job is to approach likely customers and encourage them to use the services of the house. Donald has committed the offense of promoting prostitution in the third degree, because soliciting patrons for prostitution is included in the definition of "promoting prostitution."

13.6 Promoting Prostitution in the Second Degree (§567.060)
Class D Felony**Elements:**

A person commits the offense of promoting prostitution in the second degree if (s)he:

1. knowingly promotes prostitution by
2. managing, supervising, controlling, or owning, either alone or in association with others
3. a house of prostitution or a prostitution business or enterprise involving prostitution activity by **two or more** prostitutes, OR
4. promotes prostitution of a person sixteen or seventeen years of age

Comments:

The elements of this offense are self-explanatory. To be guilty an individual must promote prostitution in a certain way – by maintaining a house of prostitution or prostitution business involving two or more prostitutes. Promoting prostitution in the third degree is a lesser included offense.

Example:

Harold owns a house, and he leases it to Donald, believing Donald uses it as his dwelling. Actually, Donald is using it as a house for his prostitution business. Harold has not committed any offense because he did not know of the prostitution taking place in his house, and he has therefore not knowingly promoted

prostitution. Donald has committed this offense if he employs at least two prostitutes.

13.7Promoting Prostitution in the First Degree (§567.050)
Penalty Varies (See Below)

Elements:

A person commits the offense of promoting prostitution in the first degree if (s)he knowingly:

1. promotes prostitution by compelling a person to enter into, engage in, or remain in prostitution.; OR
2. promotes prostitution of a person less than 16 years old; OR
3. owns, manages, or operates an interactive computer service, or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another.

Penalty:

Promoting prostitution in the first degree under paragraph (1) or (3) is a class B felony. If a defendant violates paragraph (3), it is a class A felony if the defendant's acts are in reckless disregard of the fact that his or her conduct contributed to the offense of trafficking for the purposes of sexual exploitation under §566.209 (see ¶6.29).

Promoting prostitution in the first degree under paragraph (2) is a felony punishable by a term of imprisonment between five to fifteen years.

A person injured by the acts committed in violation of paragraph 3 shall have a civil cause of action to recover damages and reasonable attorneys' fees for such injury.

Definition:

The term “**compelling**” includes:

1. the use of forcible compulsion;
2. the use of a drug or intoxicating substance to render a person incapable of controlling his/her conduct or appreciating its nature; OR
3. withholding or threatening to withhold a dangerous drug or a narcotic from a drug dependent person.

The term “**interactive computer service**” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides

access to the internet and such systems operated or services offered by libraries or educational institutions.

Comments:

Promoting prostitution in the first degree requires proof that the defendant promoted prostitution (see promoting prostitution in the third degree) and that (s)he either promoted the prostitution of a person less than 16 years old or compelled a person to become or remain a prostitute, or engage in acts of prostitution.

Examples:

1. Donald supplies Dorothy, an addict, with her heroin. Donald tells Dorothy that he will no longer supply her with heroin unless she agrees to enter into prostitution. She agrees to engage in prostitution to get the heroin. Donald has committed the offense of promoting prostitution in the first degree. He has promoted prostitution because he has caused Dorothy to engage in prostitution. He has compelled Dorothy to engage in prostitution because he has conditioned the heroin supply on her performance as a prostitute.
2. Flo, a heroin addict, works as a prostitute for Donald and is paid in heroin. Flo wants to quit work, but Donald tells her that if she does he will not give her any more heroin, even if she pays him cash for it. Donald has committed the offense of promoting prostitution in the first degree because he has compelled Flo to remain in prostitution by threatening to withhold narcotics from a drug dependent person.
3. Donald approaches Susan, 15, and tells her that he will pay her \$300.00 a week if she will become a prostitute for his business. Susan agrees and enters into prostitution. Donald has committed the offense of promoting prostitution in the first degree because he has promoted the prostitution of a person under 16 years of age. No compulsion is necessary for Donald to commit the offense because Susan is under 16. If found guilty, Donald could be punished between five and fifteen years.

13.8 Promoting Travel for Prostitution (§567.085)**Class D Felony****Elements:**

A person commits the offense of promoting travel for prostitution if:

1. they knowingly sell or offers to sell;
2. travel services that include prostitution; OR
3. facilitate travel for the purpose of engaging in prostitution.

Chapter 14

Offenses Against the Family

14.1 Introduction

This chapter covers offenses designed to preserve family relationships and offenses designed to protect the welfare of children. There is no actual offense of adult abuse. Adult abuse is an umbrella term that covers all protective orders, assault offenses, and sexual offenses.

Definitions.

Abuse: includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to §§455.010-455.085, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member for discipline of a child, including spanking, in a reasonable manner;

Abusing a pet: purposely or knowingly causing, attempting to cause, or threatening to cause physical injury to a pet with the intent to control, punish, intimidate, or cause distress;

Assault: purposely or knowingly placing or attempting to place another in fear of physical harm;

Battery: purposely or knowingly causing physical harm to another with or without a deadly weapon;

Coercion: compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage;

Harassment: engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include, but is not limited to:

- a. Following another about in a public place or places;
- b. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;

Sexual assault: causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress, or without that person's consent;

Unlawful imprisonment: holding, confining, detaining or abducting another person against that person's will;

Adult: any person seventeen years of age or older or otherwise emancipated; (See discussion in section 1.21 of this text.)

Child: any person under seventeen years of age unless otherwise emancipated; (See discussion in section 1.21 of this text.)

Court: the circuit or associate circuit judge or a family court commissioner;

Domestic Victim: a household or family member as the term "family" or "household member" is defined in §455.010, including any child who is a member of the household or family

Domestic Violence: abuse or stalking committed by family or household member, as such terms are defined in this section.

Ex parte order of protection: an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;

Family or household member: spouses, former spouses, any person related by blood or marriage, any person who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time;

Full order of protection: an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

Order of protection: either an ex parte order of protection or a full order of protection;

Pet: a living creature maintained by a household member for companionship and not for commercial purposes;

Petitioner: a family or household member who has been a victim of domestic violence or any person who has been the victim of stalking, or a person filing on behalf of a child, who has filed a verified petition pursuant to the provisions of §455.020;

Respondent: the family or household member or any person who has been a victim of domestic violence alleged to have committed an act of stalking, against whom a verified petition has been filed;

Stalking: is when any person purposely engages in an unwanted course of conduct that causes alarm to another person, or a person who resides together in the same household with the person seeking the order of protection when it is reasonable in that person's situation to have been alarmed by the conduct. And repeatedly harasses or follows with the intent of harassing another adult. As used in this subdivision, "**course of conduct**" two or more acts that serve no legitimate purpose and may include acts in which the stalker directly, indirectly,

or through a third party follows, monitors, observes, surveils, threatens, or communicates to a person by any action, method, or device.

Prior and Persistent Assault Offenders (§565.079):

assault offense, include –

1. (attempted)murder in the first or second degree;
2. (attempted) Involuntary manslaughter in the first degree;
3. (attempted) Assault in the first, second, third or fourth degree;
4. (attempted) domestic assault in the first, second, third, or fourth degree;
or
5. any other offense committed in another state that would constitute any of the listed offenses.

Prior assault offender: is a person who has been found guilty of one domestic assault offense within the previous 5 years.

Persistent assault offender: is a person who has been found guilty of two or more assault offenses within the previous 10 years.

The Court cannot suspend the imposition of sentence as to a prior or persistent assault offender, sentence a person to pay a fine in lieu of a term of imprisonment, and the person will not be eligible for parole or probation until such person has served a minimum of 6 months imprisonment.

The Court shall sentence a person who has been found to be a prior assault offender and is found guilty of a class B, C, or D felony under Chapter 565 to a term of imprisonment for the class *one* step higher than the current offense.

The Court shall sentence a persistent assault offender who is found guilty of a class C or D felony under Chapter 565 to a term of imprisonment for a class *two* steps higher than the current offense. A person found guilty of a class B felony shall be sentenced as a class A felony.

14.2 Domestic Assault in the First Degree (§565.072)
Penalty Varies (See Below)**Elements:**

A person commits the offense of domestic assault in the first degree if (s)he:

1. attempts to kill; or
2. knowingly causes or attempts to cause serious physical injury
3. to a domestic victim.

Penalty:

Domestic assault in the First Degree is a Class B Felony, unless serious physical injury results, then it becomes a Class A Felony

14.3 Domestic Assault in the Second Degree (§565.073)
Class D Felony

Elements:

A person commits the offense of domestic assault in the second degree if (s)he:

1. knowingly causes physical injury by any means, including but not limited to, use of a deadly weapon or dangerous instrument, or by choking or strangulation; or
2. recklessly causes serious physical injury; or
3. recklessly causes physical injury by means of any deadly weapon
4. to a domestic victim.

14.4 Domestic Assault in the Third Degree (§565.074)
Class E Felony

Elements:

A person commits the offense of domestic assault in the third degree if (s)he:

1. attempts to cause physical injury; or
2. knowingly causes physical pain or illness
3. to a domestic victim.

14.5 Domestic Assault in the Fourth Degree (§565.076)
Penalty Varies (See Below)

A person commits the offense of domestic assault in the fourth degree if (s)he:

1. attempts to cause or recklessly causes physical injury, physical pain, or illness; or
2. with criminal negligence causes physical injury by means of a deadly weapon or dangerous instrument; or
3. purposely places the victim in apprehension of immediate physical injury by any means.
4. recklessly engages in conduct which creates a substantial risk of death or serious physical injury; or
5. knowingly causes physical contact knowing the victim will regard the contact as offensive; or
6. knowingly attempts to cause or causes the isolation of the victim by unreasonable or substantially restricting or limiting his or her access to

- other persons, telecommunications devices or transportation for the purpose of isolation
7. to a domestic victim.

Penalty:

Domestic assault in the fourth degree is a class A misdemeanor. However, if the defendant has previously been found guilty of the offense of domestic assault (of a domestic victim), of any assault offense under Chapter 565, or of any offense against a domestic victim committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which if committed in this state two or more times would be a violation of this section, it will be charged as a Class E Felony.

Comments:

These statutes were enacted to provide additional protection for victims of domestic assaults. The class of victims protected under these statutes includes not only family members, but also household members and significant others who are involved in a romantic or intimate relationship with the perpetrator of the assault. Any offense committed in violation of any county or municipal ordinance in any state, any state law, any federal law, or any military law which, if committed in the State of Missouri, would be a violation of this section, may be used as a prior for enhancement purposes.

14.6 Violations of a Protective Order-Adult Abuse (§455.085)

Penalty Varies (See Below)

Elements:

A person commits the offense of violation of a protective order if:

1. a valid protection order of a court is in effect; AND
2. (s)he has notice of the order, AND
3. (s)he violates a term or condition of the court order with regard to domestic violence, stalking, sexual assault, child custody, communication initiated by the respondent, or entrance upon the premises of the petitioner's dwelling, unit, place of employment or school, or being within certain distance of petitioner or child of that petitioner.

Penalty:

Normally violation of a protective order is a class A misdemeanor. However, it will become a class E felony if the defendant has pleaded guilty or has been found guilty of a violation of a protective order within the preceding five years.

Comments:

If a law enforcement officer has probable cause to believe that a person has committed a violation of law amounting to domestic violence, the officer may arrest the person whether or not the violation occurred in the presence of the arresting officer. If a person fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the person, and shall return the minor children to the care and custody of the person having legal custody. The offense is committed if a person has notice of a protective order against him/her restricting the person from engaging in certain acts and that person acts in violation of the court order, such as entering upon the premises of the protected party. It is a violation whether the order is ex parte or a full order of protection. A violation of a valid order of protection shall not preclude the charging and prosecution of the person for other offenses arising out of the incident.

Law enforcement agencies shall apply the same standard for response to an alleged incident of abuse or a violation of any order of protection as applied to any like offense involving strangers.

No advance filing fee or bond is required before filing a petition seeking protection.

The law enforcement agency responsible for maintaining MULES shall enter information contained in any order of protection within twenty-four hours from the time the order is granted.

The officer at the scene of an alleged incident of abuse **shall** inform the abused party of available shelters for victims of domestic violence. Law enforcement officials at the scene **shall provide or arrange** transportation for the abused party to a medical facility for treatment of injuries or to a place of shelter or safety.

When an officer declines to make an arrest of a person who has committed a violation of law amounting to abuse or assault, the officer **shall** make a written report of the incident completely describing the offending party, giving the victim's name and address, the time when the incident occurred, reasons why no arrest was made, and any other pertinent information. Any law enforcement officer who is called to the same address within a twelve-hour period of time, and who shall find probable cause to believe the same offender has again committed a violation of law amounting to abuse or assault, **shall arrest** the offending party.

14.7 Adult Abuse (§455.085.1)

When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to abuse or stalking, as defined in §455.010, against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting officer. When the officer declines to make arrest pursuant to this subsection, the officer **shall make a written report** of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made and any other pertinent information. Any law enforcement officer subsequently called to the **same address** within a **twelve-hour period**, who shall find probable cause to believe the same offender has again committed a violation as stated in this subsection against the same or any other family or household member, **shall arrest** the offending party for this subsequent offense. The primary report of non-arrest in the preceding twelve-hour period may be considered as evidence of the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

When a law enforcement officer has probable cause to believe that a party, against whom a protective order has been entered and who has notice of such order entered, has committed an act of abuse in violation of such order, the officer shall arrest the offending party-respondent whether or not the violation occurred in the presence of the arresting officer. Refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this subsection.

When an officer makes an arrest, he is not required to arrest two parties involved in an assault when both parties claim to have been assaulted. The arresting officer shall attempt to identify and shall arrest the party he believes is the primary physical aggressor. The term "**primary physical aggressor**" is defined as the most significant, rather than the first, aggressor. The law enforcement officer shall consider any or all of the following in determining the primary physical aggressor:

The intent of the law to protect victims of domestic violence from continuing abuse; OR

The comparative extent of injuries inflicted or serious threats creating fear of physical injury; OR

The history of domestic violence between the persons involved.

No law enforcement officer investigating an incident of family violence shall threaten the arrest of all parties for the purpose of discouraging requests or law enforcement intervention by any party. Where complaints are received from two or more opposing parties, the officer shall evaluate each complaint separately to determine whether he should seek a warrant for an arrest.

When a person against whom an order of protection has been entered fails to surrender custody of minor children to the person to whom custody was awarded in an order of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.

Related Offenses:

Assault	¶5.7
Interference with custody	¶5.29

14.8 Stalking and Stalking Related Offenses**Introduction:**

In the Revised Criminal Code, the term “harass” is replaced with the defined term “disturbs.” In addition, the structure of the provision was the division of the offense into two degrees, with the offense formerly designated as “aggravated stalking” being placed in a separate, reformatted section.

14.9 Stalking First Degree (§565.225)
Penalty Varies (See Below)**Elements:**

A defendant purposely, through his or her course of conduct, disturbs or follows with the intent of disturbing another person; and

1. Makes a threat communicated with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety, the safety of his or her family or household member(s), or the safety of domestic animals or livestock . . . kept at such person’s residence or on such person’s property; or
2. At least one of the acts constituting the course of conduct is in violation of an order of protection and the person has received actual notice of such order; or
3. At least one of the actions constituting the course of conduct is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal; or
4. At any time during the course of conduct, the other person is seventeen years or age or younger and the person disturbing the other person is twenty-one years of age or older; or

5. (S)he has previously been found guilty of domestic assault, violation of an order of protection, or any other offense where the other person was the victim.

Penalty:

The offense of stalking is a class E felony upon the first offense. A second or subsequent finding or plea of guilty to stalking is a class D felony even if the defendant's prior offense was committed in another state, or under federal law, or under military law and would have been chargeable as stalking in the State of Missouri, or the victim is intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer.

14.10 Stalking Second Degree (565.227)
Penalty Varies (See Below)

Elements:

A defendant purposely, through his or her course of conduct, disturbs, or follows with the intent to disturb another person.

Penalty:

The offense of Stalking Second Degree shall be a class A misdemeanor for the first offense. A second or subsequent offense of stalking is a class E felony even if the defendant's prior offense was committed in another state, or under federal law, or under military law and would have been chargeable as stalking in the State of Missouri, or the victim is intentionally targeted as a law enforcement officer, as defined in §556.061, or the victim is targeted because (s)he is a relative within the second degree of consanguinity or affinity to a law enforcement officer.

Definitions:

In this section, the following definition shall be used in determining the meaning of stalking and other key terms:

Course of conduct--a pattern of conduct composed of two or more acts which may include communications by any means, over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." Such constitutionally protected activity includes picketing or other organized protests.

14.11 Bigamy (§568.010)
Class A Misdemeanor

Elements:

1. A **married person** commits the offense of bigamy if (s)he:
 - a. purports to marry another; OR
 - b. cohabits with one whom (s)he entered into a bigamous marriage in another jurisdiction.
2. An **unmarried person** commits bigamy if (s)he:
 - a. purports to marry another
 - b. knowing that the other person is married; OR
 - c. cohabits with one whom (s)he entered into a bigamous marriage in another jurisdiction.

Comments:

The Code allows a reasonable belief of eligibility to remarry as a defense to a charge of bigamy. If the defendant reasonably believed that his/her spouse was dead, or that (s)he and his/her spouse had gone through a valid divorce or annulment proceeding, the remarriage will not be bigamous.

Also, an unmarried person must know that the other person is married to another before (s)he can be convicted of bigamy.

Examples:

1. Donald, a married man, goes through a marriage ceremony with Mary, an unmarried woman, who does not know that Donald is married. Donald is guilty of bigamy, but Mary is not, since she did not know that Donald was married.
2. Donald and Dorothy both know that Donald is married to Sally. Donald and Dorothy go through a marriage ceremony in Kansas and then move to Missouri, where they live as husband and wife. Both Donald and Dorothy are guilty of bigamy.

Cross Reference:

Knowingly

14.12 Incest (§568.020)
Class E Felony

Elements:

A person commits the offense of incest if (s)he:

1. marries; OR
2. purports to marry; OR
3. engages in sexual intercourse or deviate sexual intercourse
4. with a person
5. that (s)he knows is his/her:
 - a. ancestor or descendant by blood or adoption; OR
 - b. stepchild, while the marriage creating the relationship still exists; OR
 - c. brother or sister of the whole or half-blood; OR
 - d. uncle, aunt, nephew, or niece of the whole blood.

Comments:

This section prohibits sexual intercourse and attempts to marry between closely related persons. The individual must know that the relationship exists, or (s)he is not guilty of an offense under this section.

Examples:

1. Donald knows that Sally is his niece, but Sally does not know that she is related to Donald. They go through a marriage ceremony. Donald is guilty of incest, but Sally is not.
2. Donald has sexual intercourse with his 19-year-old step-daughter, Dorothy. Donald is still married to Dorothy's mother. Donald and Dorothy are both guilty of incest.

Cross References:

Knowingly
Sexual intercourse
Deviate sexual intercourse

14.13 Abandonment of a Child in the First Degree (§568.030)
Penalty Varies (See Below)

Elements:

A person commits the offense of abandonment of a child in the first degree if (s)he:

1. is a parent, guardian, or person legally charged with the care or custody;
2. of a child less than four years of age; and
3. leaves the child in any place;
4. with the purpose to wholly abandon the child;
5. under circumstances which are likely to result in serious physical injury or death.

Penalty:

Abandonment of a Child in the First Degree is a Class B Felony unless the child dies, then it is a Class A Felony.

14.14 Abandonment of a Child in the Second Degree (§568.032)
Penalty Varies (See Below)

Elements:

A person commits the offense of abandonment of a child in the second degree if (s)he:

1. is a parent, guardian, or person legally charged with the care or custody;
2. of a child less than eight years of age; and
3. leaves the child in any place;
4. with the purpose to wholly abandon the child;
5. under circumstances which are likely to result in serious physical injury or death.

Penalty:

The offense of abandonment of a child in the second degree is a class D felony, unless the child suffers serious physical injury, in which case it is a class B felony. It is a class A felony if the child dies.

Examples:

1. The mother of a three-year-old child leaves the child playing in a public park for a few hours while she does her housework. The child wanders through the city street and is finally found by the police. The mother later picks the child up at the police station. She is not guilty of abandonment because she

did not have a purpose to abandon the child permanently. She may, however, be guilty of endangering the welfare of a child (§568.050).

2. The father of a seven-year-old child decides that he can't stand the pressures of fatherhood and moves to another city, leaving the child in his old house. He has committed the offense of abandonment of a child in the second degree.

14.15 Abandonment of a Corpse (§194.425)

Class E Felony

A defendant is guilty of abandoning a corpse if (s)he:

1. abandons, disposes, deserts or leaves;
2. a corpse;
3. without properly reporting the location of the corpse to law enforcement officials in that county.

14.16 Criminal Nonsupport (§568.040)

Penalty Varies (See Below)

Elements:

1. A person commits the offense of nonsupport if (s)he:
 - a. knowingly fails to provide
 - b. adequate support
 - c. for his/her spouse.
2. A parent commits the offense of nonsupport if (s)he:
 - a. knowingly fails to provide
 - b. adequate support
 - c. which (s)he is legally obligated to provide for his/her minor child or step-child.

Penalty:

Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class E felony.

Comments:

The word "support" means food, clothing, lodging, and medical or surgical attention. "Child" includes any adoptive, natural, legitimate, or illegitimate child.

"Good cause" means any substantial reason why the defendant is unable to provide adequate support. Good cause does not exist if the defendant purposely avoids employment and other means available to provide support. Good cause is an affirmative defense.

This section provides a criminal penalty for persons who knowingly fail to support their spouses, and parents who knowingly fail to support their children.

Example:

The father of two children is divorced from his wife and has been ordered to pay \$200.00 per month child support. He refuses to pay and has a total arrearage owed of \$3,600. He has committed a felony of criminal nonsupport since the total arrearage exceeds 12 months of child support due by valid court order.

Cross References:

Knowingly
Purposely

**14.17 Endangering the Welfare of a Child in the First Degree
 (§568.045)**
Penalty Varies (See Below)

Elements:

A person commits the offense of endangering the welfare of a child in the first degree if (s)he:

1. knowingly acts
 - a. in a manner that creates substantial risk to life, body, or health
 - b. of a child less than 17 years old; OR
2. a. knowingly engages
 - b. in sexual conduct
 - c. with a person under the age of 17 years of age
 - d. over whom the actor is the parent, guardian, or otherwise charged with the care of the person; OR
3. a. knowingly encourages
 - b. a child less than 17 years old
 - c. to engage in conduct
 - d. which violates the provision of Chapter 579; OR
4. a. in the presence of a person less than seventeen years of age or in a residence where a person less than seventeen years of age resides
 - b. unlawfully manufactures, or attempts to manufacture compounds, or possesses or produces, or prepares, sells, transports, tests or analyzes amphetamine or methamphetamine or any of their analogues.

Penalty:

The offense of endangering the welfare of a child in the first degree is a class D felony unless the offense:

1. Is committed as part of an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity, or where physical injury to the child results, or the offense is a second or subsequent offense under this section, in which case the offense is a class C felony; OR
2. Results in serious physical injury to the child, in which case the offense is a class B felony; OR
3. Results in the death of a child, in which case the offense is a class A felony.

**14.18 Endangering the Welfare of a Child in the Second Degree
(\$568.050)**

Penalty Varies (See Below)

Elements:

A person commits the offense of endangering the welfare of a child in the second degree if (s)he:

1. a. acts with criminal negligence
b. in a manner that creates substantial risk to the life, body, or health
c. of a child less than 17 years old; OR
2. a. knowingly encourages, aids, or causes
b. a child less than 17 years old
c. to engage in any conduct
d. which causes or tends to cause the child to come within the provisions of subsection 1 or 2 of §211.031; OR
3. a. is a parent, guardian, or other person legally charged with the care or custody
b. of a child less than 17 years old
c. and (s)he recklessly fails or refuses
d. to exercise reasonable diligence in the care or control of such child
e. to prevent him/her from coming within the provisions of subsection 1 or 2 of §211.031.; OR
4. Knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in §579.105;

Penalty:

Endangering the welfare of a child in the Second Degree is a Class A Misdemeanor unless the offense is committed as part of a ritual or ceremony, then it is a class E felony.

Comments:

Section 211.031 gives the juvenile courts jurisdiction over children whose behavior, environment, or associations are injurious to his/her welfare or the welfare of others, and children who are alleged to have violated a state law or municipal ordinance.

This section covers acts such as child abuse, contributing to the delinquency of a minor, and allowing one's own minor children to become delinquent. This section protects a child under 17 and includes all conduct, which creates significant risk to the child's life, body, or health. A person commits this offense when (s)he acts with "**criminal negligence**".

Examples:

1. A father punishes his ten-year-old child by beating him with his fists, bruising the child. He could be charged with endangering the welfare of a child or with assault.
2. Donald, 20, is the leader of a youth gang, which steals and commits acts of vandalism. He encourages his 13-year-old friend, Danny, to join the gang. Donald is guilty of endangering the welfare of a child by encouraging him to associate with persons who are injurious to his welfare and to violate the law.
3. The father of a 13-year-old child works long hours, leaving the child alone. The juvenile officer tells the father that his son may be involved with a gang of thieves and vandals. The father says "so what" and takes no steps to discover if this information is true or to stop his son's association with the gang. The father may be charged with endangering the welfare of a child for recklessly refusing to exercise reasonable diligence in the care of the child to prevent him from associating with persons injurious to his welfare.

Cross References:

Knowingly
Recklessly
Criminal negligence

Related Offenses:

Abuse of a child ¶14.20

14.19 Leaving a Child Unattended in a Motor Vehicle (§577.300)
Penalty Varies (See Below)

Elements:

A person commits the offense of leaving a child unattended in a motor vehicle in the first degree if (s)he:

1. knowingly leaves a child ten years of age or less
2. unattended in a motor vehicle, and
3. such child fatally injures another person
4. a. by causing a motor vehicle collision, OR
b. by causing the motor vehicle to fatally injure a pedestrian.

A person commits the offense of leaving a child unattended in a motor vehicle in the second degree if (s)he:

1. knowingly leaves a child ten years of age or less
2. unattended in a motor vehicle, and
3. such child injures another person
4. a. by causing a motor vehicle collision, OR
b. by causing the motor vehicle to injure a pedestrian.

Penalty:

Leaving a child unattended in a motor vehicle in the first degree is a class C felony. Leaving a child unattended in a motor vehicle in the second degree is a class A misdemeanor.

Definitions:

“Collision” means the act of a motor vehicle coming into contact with an object or person.

“Injury” means physical harm to the body of a person.

“Motor Vehicle” means any automobile, truck, truck-tractor, or any motor bus or motor-propelled vehicle not exclusively operated or driven on fixed rails or tracks.

“Unattended” means not accompanied by an individual fourteen years of age or older.

14.20 Child Abuse (§568.060)

Introduction:

The following sections all relate to the physical or emotional abuse of a child. The following sections are not limited to parents and guardians who abuse their own children. It applies to all people who abuse any child-defined in the following sections as a person under 17 years of age.

Acts that victimize the family pose a serious threat to the family unit and the very moral fiber of the American society. More importantly, these acts pose a serious threat to the mental and physical well-being of the children involved.

Suspected abuse in the home is usually difficult to investigate. The Missouri Division of Family Services has specially trained investigators who will respond to a suspected abuse situation. **Call the child abuse and neglect hotline: 1-800-392-3738.**

As a general rule, parental discipline that results in significant sustained injury to a child is not normal or acceptable and is child abuse.

14.21 Abuse or Neglect of a Child (§568.060)
Penalty Varies (See Below)

Elements:

A person commits the offense of abuse or neglect of a child if that person:

1. a. knowingly causes,
b. a child less than eighteen,
c. to suffer physical or mental injury as a result of abuse or neglect.
2. a. knowingly causes,
b. a child less than eighteen,
c. to be placed in a situation in which the child may suffer physical or mental injury as a result of abuse or neglect.
3. a. recklessly causes,
b. a child less than eighteen,
c. to suffer from abusive head trauma.

Penalty:

Class D felony without probation or parole until one year has been served unless the defendant has previously been found guilty of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct or unless the injury inflicted on the child is a serious emotional injury or serious physical injury in which case the penalty is a **class B felony** without eligibility for probation or parole until the defendant has served at least five years of his or her sentence. The offense of abuse or neglect is a **class A felony** without probation or parole until at least fifteen years has been served if the child dies, or

if the injury is a serious emotional or physical injury and the child is less than fourteen years of age and the injury is a result of sexual abuse (§566.100) or sexual exploitation of a minor (§573.023)

Definitions:

Abuse – means infliction of physical, sexual or mental injury against a child by any person 18 years old or older. It shall not include accidental injury or injury inflicted by discipline, including spanking inflicted in a reasonable manner.

Abusive head trauma – a serious physical injury to the head or brain caused by any means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or kicking.

Mental injury – an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable or substantial impairment of the ability of the child to function within the child's normal range of performance or behavior.

Neglect – the failure to provide, by those responsible for the care, custody and control of the child, the care reasonable and necessary to maintain the physical and mental health of the child, when such failure presents a substantial probability that death or physical injury or sexual injury would result.

Physical injury – physical pain, illness, or any impairment of physical condition, including but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary disfigurement and impairment of any bodily function or organ.

Serious emotional injury -- an injury that creates a substantial risk of temporary or permanent psychological damage, manifested by impairment of behavioral, cognitive, or physical condition. (This injury shall be established by expert testimony.)

Serious physical injury – a physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

Examples:

1. Youngster, under age 17, desires to join the Oldster's gang. The gang leader brands Youngster on the arm with the gang's insignia using a hot iron. The gang leader may be guilty under this section. The fact that Youngster consented to the physical injury does not prevent the criminal charge since the minor was not legally competent to consent to the inflicted injury.
2. A parent who is disciplining his child takes a belt and whips the child which results in great pain but no significant injury. The parent probably is not guilty under this section because it is not designed to criminalize normal parental discipline; although whipping in this manner may be close to the limit of permissible punishment.

3. A parent locks his eight-year-old child in a closet for two days as punishment. The parent is probably guilty under this section.

14.22 Unlawful Transactions with a Child (§568.070)
Class B Misdemeanor

Elements:

A person commits the offense of unlawful transactions with a child if (s)he:

1. a. is a pawnbroker, junk dealer, dealer in secondhand goods, or an employee of such persons
b. and with criminal negligence (s)he buys or receives
c. any personal property other than agricultural products
d. from an un-emancipated minor
e. unless the child's custodial parent or guardian has consented in writing to the transaction; OR
2. a. (s)he knowingly permits
b. a minor child
c. to enter or remain in a place
d. where illegal activity in controlled substances (as defined in Chapter 579) is maintained or conducted; OR
3. a. with criminal negligence sells
i. blasting caps, bulk gunpowder, or explosives to a child under the age of 17; OR
ii. fireworks as defined in §320.106 to a child under the age of 14;
b. unless the child's custodial parent or guardian has consented in writing to the transaction.
c. Criminal negligence as to the age of the child is not an element of the offense listed under this subsection. (Not knowing the child is under 17 years old is not a defense.)

Comments:

This section covers certain kinds of prohibited transactions with children. The first subsection provides a penalty for pawnbrokers and junk dealers who buy personal property from a person they should know is an un-emancipated minor. An un-emancipated minor is a child under the age of 18 who has not yet left his/her parents' control.

The second subsection prohibits allowing someone who is known to be a minor to enter or remain on the premises where the defendant knows that activity in drugs, such as sale, use, or possession, is carried on.

The third subsection prohibits sales of dangerous items such as gunpowder and explosives to children under the age of 17. The word "explosives" does not include firearm ammunition. It also prohibits sales of fireworks to children under the age of 14. It is not necessary for the State to show that the seller was negligent as to the child's age. If the customer is in fact less than the statutory age, the seller is guilty.

Examples:

1. The suspect is a pawnbroker. A 12-year-old child offers to pawn a watch, and the suspect agrees. (S)He has committed unlawful transactions with a child.
2. The suspect runs a firework stand. (S)He sells fireworks to a 13-year-old boy, believing the child is 16. The suspect has committed unlawful transactions with a child because his/her unawareness of the child's age does not matter.
3. The suspect sells a pound of black gunpowder to a 16-year-old boy. (S)He has committed unlawful transactions with a child.

Cross References:

Knowingly

Criminal negligence

See also Chapter 579 and §320.106

14.23 Use of a Child in a Sexual Performance (§573.200)
Penalty Varies (See Below)**Elements:**

A person commits the offense of use of a child in a sexual performance if that person:

1. a. employs, authorizes, or induces
b. a child less than 18 years old
c. to engage in a sexual performance which includes sexual conduct
d. while knowing the character and content thereof; OR
2. a. is a parent, legal guardian, or custodian of a child less than 18 years old; AND
b. consents to the participation of the child in such sexual performance.

Penalty:

Use of a Child in a Sexual Performance is a Class C Felony. If the child suffers serious emotional injury, then it is a Class B Felony.

Definitions:

As used in Chapter 573, the following terms have the meaning indicated. The definition of certain terms (even similar/identical terms) may differ between chapters (for example, compare the definitions of “sexual contact” in §566.010(6) and §567.010(5)).

Sexual performance—any performance, or part thereof, which includes sexual conduct by a child less than 18.

Sexual conduct—actual or simulated sexual intercourse, deviate sexual intercourse, masturbation, or physical contact with a person’s clothed or unclothed genitals, public area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any or acts including animals or latent objects in an act of apparent sexual stimulation or gratification

Example:

A parent allows his 15-year-old daughter to engage in sexual acts with Donald. The parent and Donald are both guilty under this section. Donald may also be guilty of promoting pornography in the second degree (§573.030).

14.24 Promoting a Sexual Performance by a Child (§573.205)
Class C Felony**Elements:**

A person commits the offense of “promoting a sexual performance” if that person:

1. a. knowing the character and content thereof,
b. promotes a performance which includes sexual conduct
c. by a child less than 18 years old; OR
2. a. produces or directs
b. any performance which includes sexual conduct
c. by a child less than 18 years of age.

Definitions:

As used in Chapter 573, the following terms have the meaning indicated. The definition of certain terms (even similar/identical terms) may differ between chapters (for example, compare the definitions of “sexual contact” in §566.010(6) and §567.010(5)).

Sexual performance—any performance, or part thereof, which includes sexual conduct by a child less than 18.

Sexual conduct—actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

14.25 Trafficking in Children (§568.175)
Class D Felony

Elements:

A person commits the offense of trafficking in children if (s)he:

1. a. offers, gives, receives, or solicits
 - b. any money, consideration, or other thing of value
 - c. for the delivery, or offer of delivery, of a child to another person
 - d. i. for the purposes of adoption; OR
ii. for execution of a consent to adopt; OR
1. waiver of consent to future adoption; OR
2. consent to termination of parental rights.

Comments:

An offense is not committed under this statute if the money, consideration, or thing of value is for: (1) fees to, or adoption subsidy payments by, a licensed child placing agency; (2) the actual costs of hospital, physician, or other medical expenses incurred in connection with prenatal care, birth, and postnatal care of the minor child to be adopted; (3) court costs or fees for legal services rendered to the adoptive parents in connection with the placement or adoption of the minor; (4) the costs of foster care rendered by or through a licensed child placing agency; (5) cancellation of child support when the adopting party is a stepparent of the child being placed for adoption.

The intent of the statute is to prohibit and put a stop to the “wholesaling” of children by unlicensed persons or agencies.

14.26 Trafficking in Fetal Tissue (§188.036)

1. Under this section, a physician is prohibited from performing an abortion if (s)he knows that the pregnancy was conceived to provide, and the abortion intended to procure, fetal organs or tissue for medical transplantation. A person may not use fetal organs or tissue produced by an abortion for medical transplantation if (s)he knows that the abortion was done for that purpose.

2. It also prohibits offering a monetary or other inducement to procure an abortion or to conceive an unborn child for medical, scientific, experimental, or therapeutic use of fetal organs or tissues.
3. Finally, no person may offer or receive compensation for fetal organs or tissue resulting from an abortion, except for payment for burial or for postmortem medical examination.

14.27 Genital Mutilation (§568.065)**Class B Felony****Elements:**

A person commits the offense of genital mutilation if (s)he:

1. a. excises or infibulates in whole or in part
b. the labia majora, labia minora, vulva or clitoris of a female child
c. less than seventeen years of age; OR
2. a. is a parent, guardian, or other person legally responsible for a female child less than seventeen years of age, AND
b. permits the excision or infibulation, in whole or in part, of the labia majora, labia minora, vulva or clitoris of such female child.

Comments:

This section prohibits genital mutilation a custom practiced routinely in many African and Middle East countries. The statute expressly provides that belief that the conduct proscribed under this section is required as a matter of custom, ritual or standard practice, or that the child, parent or legal guardian consented to the procedure, is not an affirmative defense to this offense. The statute does provide that if the procedure is necessary to preserve the health of the child, or conducted upon a child who is in labor or has just given birth, and is performed for a medical purpose by a licensed medical practitioner, then such circumstance constitutes an affirmative defense to the charge of genital mutilation.

Chapter 15

Gambling

(§572.010-§572.125)

15.1 Introduction

The sections in this chapter deal with gambling and related offenses. Section 572.100 -- Preemption -- states:

"The General Assembly, by enacting this chapter, intends to preempt any other regulation of the area covered by this chapter. **No governmental subdivision or agency may enact or enforce a law** that regulates or makes any conduct in the area covered by this chapter an offense, or the subject of a criminal or civil penalty or sanction of any kind."

As a result of §572.100, all future arrests and prosecutions for gambling must be under the state statutes and not under city ordinances. Section 572.090 gives the prosecuting attorney the power to commence a civil action to force gambling houses to close.

This section prohibiting any governmental subdivision or agency from enacting or enforcing a law governing gambling did not nullify regulations by the supervisor of Liquor Control prohibiting gambling on premises of a liquor licensee because such regulation is not aimed at gambling per se, but is aimed rather at control of licensed alcoholic beverage-selling businesses.

15.2 Gambling (§572.020)

Penalty Varies (See Below)

Elements:

A person commits the offense of gambling if (s)he:

1. a. knowingly
b. engages in gambling (class C misdemeanor); OR
2. a. knowingly
b. engages in gambling
c. with a child less than seventeen years of age (class B misdemeanor); OR

3. a. as a professional player
- b. knowingly
- c. engages in gambling (class A misdemeanor).

Comments:

This section makes all types of gambling illegal, including friendly bets and friendly games. A person **gambles** if (s)he risks **something of value** (usually money, but it can also include property, token, credit, service, entertainment, free games, etc.) on the outcome of a contest of chance (any contest, game, or device whose outcome depends largely on chance) or future contingent event not under his/her influence or control with the understanding that (s)he will receive something of value upon a certain outcome.

There are exceptions to the definition of gambling: bona fide business transactions, including stock, commodity, and insurance dealings are not forms of gambling. In addition, playing pinball machines is not deemed gambling if the only return is a free game because a free game is considered too trivial to be something of value. However, if the free game is redeemable in cash, the person may be convicted of gambling.

The penalty for gambling depends upon a number of factors. For an ordinary player, that is, a contestant who is to receive only his/her personal winnings, the maximum penalty is a fine of \$750.00 and imprisonment up to 15 days. A more severe penalty is provided when a minor is involved even though his/her parents may have consented. The individual may be fined up to \$1,000.00 and receive up to six months in jail. If a professional player is involved, the individual may be fined up to \$2,000.00 and receive up to one year in jail. A professional player is either a person who earns his/her living by gambling or who has earned 20 percent or more of his/her income from gambling in one of the past five years.

Cross References:

Gambling
Knowingly
Player
Professional player

15.3 Promoting Gambling in the Second Degree (§572.040)
Class A Misdemeanor

Elements:

A person commits the offense of promoting gambling in the second degree if (s)he:

1. knowingly advances; OR
2. knowingly profits from
3. unlawful gambling or lottery activity.

Comments:

Promoting gambling is an offense, which the Code divides into two degrees: first and second. Promoting gambling in the second degree is the basic offense. Promoting gambling in the first degree requires proof of promoting gambling in the second and additional elements.

Any person who promotes (other than merely by being a player) any type of gambling or lottery activity is covered by this section. The act of promoting gambling consists either of **advancing** or **profiting** from gambling or lottery activity.

Definitions:

"Advancing gambling" means to do something other than merely play which substantially aids in the creation or operation of gambling scheme(s), or to allow property which one owns or controls to be used for illegal gambling.

"Profit from gambling activity" means a person must receive money or other property from part of the proceeds under a prior agreement to that effect.

Examples:

1. Donald convinces David to let Donald carry on a weekly poker game in David's basement. Donald then purchases cards, poker chips, a card table, and chairs, and spreads the word about the games which then become popular in the neighborhood. Donald and David are guilty of promoting gambling in the second degree. Donald has advanced gambling by creating a particular game, purchasing equipment to be used, and encouraging people to take part in the game. Any one of these activities would be sufficient to make Donald guilty of the offense. David has advanced gambling by allowing property he owns to be used for unlawful gambling.

2. Donald and David have an agreement with the players that they (Donald and David) will receive 20 percent of the proceeds of the game. They have committed the offense of promoting gambling in the second degree because they have not only advanced gambling, they are profiting from gambling as well.

Cross References:

Knowingly
Gambling
Lottery or policy
Advance gambling activity
Profit from gambling

Related Offenses:

Gambling	¶15.2
Promoting gambling in the first degree	¶15.4

15.4 Promoting Gambling in the First Degree (§572.030)
Class E Felony**Elements:**

A person commits the offense of promoting gambling in the first degree if (s)he:

1. knowingly advances; OR
2. knowingly profits from
3. unlawful gambling or lottery activity
4. in one of the following ways:
 - a. by setting up and operating a gambling device on which more than \$100.00 is gambled per day; OR
 - b. by setting up and operating a slot machine; OR
 - c. engaging in bookmaking, accepting more than one bet and more than \$100.00 per day; OR
 - d. receiving in connection with a lottery, policy, or enterprise:
 - i. money or written records from a non-player, whose chances or plays are represented by such money or records; OR
 - ii. more than \$100.00 per day played in the scheme; OR
 - iii. something of value played in the scheme with a fair market value over \$100.00 in any one day.

Comments:

The basic act required to violate the statute is **advancing** or **profiting** from gambling. (See Comments ¶15.3 on promoting gambling in the second degree.) To commit the offense of promoting gambling in the first degree, the suspect must commit promoting gambling in the second degree and engage in one of the specified acts listed in subparagraph 4 above.

Examples:

1. Donald sets up gaming tables for the purpose of having people play roulette, blackjack, and poker. A regular crowd plays each day and the betting is well in excess of \$100.00. Donald has promoted gambling in the first degree by setting up and operating gambling devices (roulette wheels, cards, dice, etc.) to be used in gambling between persons and over \$100.00 a day is wagered.
2. Donald takes, over the telephone, numerous bets each day on baseball, football, and hockey games. The bets total over \$100.00 per day. Donald has promoted gambling in the first degree by advancing a gambling activity and accepting an amount in excess of the statutory minimum which is one bet and \$100.00.

Cross References:

Knowingly
Gambling
Lottery
Advances gambling
Profits from gambling
Gambling device
Slot machine
Bookmaking

Related Offenses:

Promoting gambling in the second degree	¶15.3
Gambling	¶15.2
Possession of a gambling device	¶15.7
Possession of gambling records, first degree	¶15.6
Possession of gambling records, second degree	¶15.5

15.5 Possession of Gambling Records in the Second Degree (§572.060)
Class A Misdemeanor

Elements:

A person commits the offense of possession of gambling records in the second degree by:

1. possessing gambling records of the kind used in
 - a. bookmaking; OR
 - b. lottery schemes
2. with knowledge of the contents of the records.

NOTE: There is an **exception** to this offense. If the records represent only the suspect's own bets and represent no more than ten bets, this offense has not been committed.

Comments:

This section is designed to cover possession of any gambling record, but is aimed specifically at the small operator.

Cross References:

With knowledge
Gambling records
Bookmaking
Lottery

Related Offenses:

Gambling	¶15.2
Possession of gambling records in the first degree	¶15.6

15.6 Possession of Gambling Records in the First Degree (§572.050)
Class E Felony

Elements:

A person commits the offense of possession of gambling records in the first degree by:

1. possessing gambling records of the kind used in:
 - a. bookmaking and representing over five bets totaling more than \$500.00; OR

- b. lottery schemes and representing more than 500 plays or chances therein
- 2. with knowledge of the contents.

NOTE: There is an **exception** to this offense. If the records represent only the suspect's own bets numbering ten or less, this offense is not committed.

Comments:

Possession of gambling records in the second degree is the basic offense. It is a lesser included offense of possession of gambling records in the first degree. The primary difference between the offenses is in the number of bets represented by the books and the amounts of the bets represented. Possession of gambling records in the second degree does not require a minimum number of bets, amount of money represented, or number of lottery chances.

Possession of gambling records in the first degree is aimed at the larger-scale gambling operations. To deter involvement in pervasive gambling operations a felony penalty is imposed.

Cross References:

With knowledge
Gambling records
Bookmaking
Lottery

Related Offenses:

Possession of gambling records in the second degree	¶15.5
Gambling	¶15.2

15.7 Possession of a Gambling Device (§572.070) **Class A Misdemeanor**

Elements:

A person commits the offense of possession of a gambling device if (s)he:

- 1. manufactures, sells, transports, places, possesses, or conducts a transaction which does or is intended to affect ownership, custody, or use of:
 - a. a slot machine; OR
 - b. any other gambling device knowing it is to be used in Missouri to advance illegal gambling

2. with knowledge of its character.

Comments:

This section makes it an offense for a person to possess a slot machine or other gambling device if the person is aware of the nature of the device and knows it is to be used in this State for gambling.

NOTE: ¶15.11 provides an exception for antique slot machines. Possession is not an offense as long as the machine is over 30 years old and is not used for gambling purposes.

Cross References:

Knowingly
Gambling device
Slot machine
Advance gambling activity

Related Offenses:

Possession of gambling records,	
first degree	¶15.6
second degree	¶15.5
Promoting gambling,	
first degree	¶15.4
second degree	¶15.3

15.8 Lottery Offenses -- No Defense (§572.080)

This section makes it clear that a person who violates a Missouri statute making lottery activity illegal may not defend on the theory that his/her activity was in furtherance of or in conjunction with a lottery in some other state.

NOTE: Lottery activity not sanctioned and regulated as the official State lottery remains unlawful.

15.9 Preemption (§572.100)

This section provides that the State is to be the only body regulating gambling; and cities, towns, and villages do not have the power to enact laws against gambling.

**15.10 Forfeiture of Gambling Devices, Records, and Money
(§513.660)**

Any gambling device or gambling record, or any money used as bets or stakes in unlawful gambling activity, possessed, or used in violation of Chapter 572 may be seized by any law enforcement officer and is forfeited to the State. Forfeiture procedures shall be conducted as provided by court rules. Forfeited money and the proceeds from the sale of forfeited property shall be paid into the school fund of the county. Any forfeited gambling device or record not needed in connection with any proceedings under Chapter 513 and which has no legitimate use shall be ordered publicly destroyed.

**15.11 Antique Slot Machines Exempt from §513.660 When
(§572.125)**

1. It shall be an affirmative defense to any prosecution under Chapter 572 relating to slot machines, if the defendant shows that the slot machine is an antique slot machine and was not operated for gambling purposes while in the defendant's possession. For the purpose of this section, an antique slot machine is one, which is over 30 years old.
2. Notwithstanding §513.660, whenever the defense provided by subsection 1 of this section is offered, no slot machine seized from any defendant shall be destroyed or otherwise altered until after a final court determination that such defense is not applicable. If the defense is applicable, any such slot machine shall be returned pursuant to provisions of law providing for the return of property.

Chapter 16

Child Pornography, Obscenity & Related Offenses

(Chapter 573)

16.1 Introduction

Child pornography is defined as:

- (a) any obscene material or performance depicting sexual conduct, or a sexual contact as these terms are defined in §566.010 or a sexual performance which has one of its participants or portrays as an observer of such conduct, contact, or performance, a person under the age of 18; OR
- (b) any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:
 1. the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct,
 2. such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct; or
 3. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct. "Identifiable minor" means a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The term "identifiable minor" shall not be construed to require proof of the actual identity of the identifiable minor.

Any material or performance is "**pornographic for minors**" if it is primarily devoted to description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse.

NOTE: That for child pornography it is **not** necessary to show that:

- 1. its predominant appeal is to prurient interest in sex; AND

2. it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; AND
3. it lacks serious literary, artistic, political, or scientific value for minors.

All that is required is material depicting sexual conduct, which has as a participant or an observer, a child under the age of 18. The statute clearly is designed to treat child pornography and material "pornographic for minors" with a far more stringent standard than offenses involving only obscene material.

Any material or performance is "obscene" if, considered as a whole, applying contemporary community standards:

1. its predominant appeal is to prurient interest in sex; AND
2. it depicts or describes sexual conduct in a patently offensive way; AND
3. it lacks serious literary, artistic, political, or scientific value.

In determining whether any material or performance is obscene, it shall be judged with reference to its impact upon ordinary adults.

The definition points out several general factors to be remembered in determining whether material is obscene. **First**, the material must be considered as a whole. One passage in a book or one scene in a movie does not make the work obscene; the work, in its entirety, must be judged obscene. **Second**, the work is to be judged according to modern community standards. **Additionally**, in judging the material one must examine the impact on ordinary adults. Thus, the reaction of the average person is the measuring stock.

Bearing these things in mind, a **three-pronged test** is applied to determine whether material is obscene. **First**, the work must predominately appeal to prurient interest in sex. That means, the **primary emphasis** must be **on creating lustful desires or thoughts**. **Second**, the work must show or describe sexual conduct in a **patently offensive** way. Sexual conduct is defined in §573.101(13) and includes any act of sexual arousal or response, including masturbation, intercourse, the touching of another's sex organs, and so on. Whatever the sexual conduct, the description must be repulsive or distasteful to the average person. **Third**, the work must lack **serious literary, artistic, political, or scientific value**. This does not mean that it must be worthless; a work may have some value and still be obscene. Keep in mind, each of the above three **elements must be present for the material to be obscene**.

Finally, most of the offenses require that the suspect have knowledge of the content and character of the material. This does not mean that (s)he must know it is obscene nor must (s)he consider it obscene. It is enough that (s)he knows what type of material (s)he has and something of its contents.

Section 573.080 prohibits cities and towns from enacting obscenity laws in the area covered by §573.020 (promoting obscenity in the first degree). However, to provide more adequate local control, a city or town may enact an ordinance proscribing anything else covered by the State obscenity laws; but, such local laws must have the same provisions as the State laws and the penalty must not be greater than those provided by State laws.

Section 573.070 provides that the prosecuting attorney, circuit attorney, or municipal attorney can seek an injunction or declaratory judgment against one who violates or who allegedly violates the obscenity laws. In many instances there will be serious questions whether or not the material sought to be suppressed is obscene. This section provides a method outside of criminal prosecution for determination of that question.

16.2 Possession of Child Pornography (§573.037)**Penalty Varies (See Below)****Elements:**

A person commits the offense of possession of child pornography if, (s)he knowingly or recklessly:

1. possesses any child pornography of a minor less than the age of eighteen years old; or
2. obscene material portraying what appears to be a minor less than the age of eighteen years old.

Penalty:

Possession of child pornography is a class D felony if the person possesses one still image of child pornography or one obscene still image. Possession of child pornography is a class B felony if the person possesses more than twenty still images of child pornography, or more than 20 obscene still images or one motion picture, film, videotape, videotape production or other moving images of child pornography or obscene material, or has pleaded guilty to or has been found guilty of a prior offense under this section.

Comments:

Section 573.037 specifically states that individual images of child pornography may be prosecuted separately.

Cross References:

Wholesale promote

Pornographic
Material
Minor
Pornographic for minors
Obscene

Related Offense:

Promoting obscenity in the second degree ¶16.4

16.3 Promoting Obscenity in the First Degree (§573.020)
Class E Felony

Elements:

A person commits the offense of promoting obscenity in the first degree if (s)he:

1. a. wholesale promotes or possesses with the purpose to wholesale promote,
b. obscene material; OR
2. a. wholesale promotes for minors or possesses with the purpose to wholesale promote for minors,
b. material pornographic for minors; OR
3. a. promotes, wholesale promotes or possesses with the purpose to wholesale promote for minors material that is pornographic for minors,
b. via the computer, Internet or a computer network,
c. knowing that the material was made available to a specific minor.

NOTES: This section makes it a felony to distribute, or offer at wholesale, obscene material. The offense of promoting obscenity is divided into two grades: **first degree and second degree**. The major difference between the two is that first degree promotion of obscenity requires wholesale distribution while second degree involves commercial or retail distribution of obscene material.

A defendant can violate the statute in **three** ways. **One** way is to promote or possess to promote obscene material, which is to be resold by the initial purchaser. The words "wholesale promote" includes manufacturing, selling, providing, mailing, delivering, transferring, publishing, distributing, etc., for later sale. The **second** way to violate the statute is to wholesale promote for minors material, which is pornographic for minors. **Finally**, the statute may be violated by wholesale promoting for minors materials which is pornographic for minors by making the material available to persons known to be minors via the computer.

NOTE: The law used to be referred to as promotion of pornography. It has been changed to promotion of obscene material because it is easier to prove that

material is "obscene" than it is to prove it is "pornographic." "Obscene" is defined as having a predominant appeal to prurient interest in sex, depicting or describing sexual conduct in a patently offensive way or lacking serious literary, artistic, political, or scientific value.

Example:

1. Donald publishes, for sale to adult bookstores, magazines which show sexual intercourse between men and women, deviate sexual intercourse, sexual contact between members of the same sex and scenes of sexual torture. Assuming the magazines are obscene and Donald is aware of the content and character of the magazines, he has promoted obscenity in the first degree by **publishing for resale obscene magazines with knowledge of** their content.
2. Al runs a bookstore. Many high school students drop by after school to look through the magazine section and buy some of the magazines. Al sends a request to Donald, which says, "Please send me some new magazines. Make sure there's a lot of nudity and pictures of sex stuff that high school kids will like." Donald sends more magazines to Al. Assuming the magazines are pornographic for minors, and Donald knew of the contents, he has promoted obscenity in the first degree because he has delivered to Al magazines, which are pornographic for minors to be sold at retail.

NOTE: Even if the magazines are not pornographic for adults, Donald can be guilty of the offense if the magazines are pornographic for minors. If the magazines are pornographic for adults, Al has committed the offense of promoting obscenity in the second degree because he possesses the magazines in order to sell them in return for pecuniary gain.

16.4 Promoting Obscenity in the Second Degree (§573.030) **Penalty Varies (See Below)**

Elements:

A person commits the offense of promoting child pornography for minors or obscenity in the second degree if (s)he knowing of its content and character:

1. a. promotes or possesses in order to promote
b. obscene material
c. for pecuniary gain; OR
2. a. produces, presents, directs, or participates
b. In any obscene performance
c. for pecuniary gain; OR
3. a. promotes or possesses with the purpose to promote

- b. material pornographic for minors
- c. for pecuniary gain; OR
- 4. a. produces, presents, directs or participates
- b. in any performance pornographic for minors
- c. for pecuniary gain; OR
- 5. a. promotes, possesses with the purpose to promote, produces, presents, directs or participates
- b. in any performance that is pornographic for minors
- c. via computer, electronic transfer, Internet or computer network
- d. making the matter available to a specific individual known to be a minor.

Penalty:

Promoting Obscenity in the Second Degree is a Class A Misdemeanor unless previously convicted under this section, then it is a Class E Felony.

Comments:

Basically, this section is aimed at the commercial distributor or merchant who profits from retail circulation of obscene material or pornography for minors. This section also prohibits participation in an obscene performance, which is pornographic for minors for remuneration, as well as the distribution or transmission of such materials via computer.

Examples:

- 1. Donald owns a bookstore. Fred enters, browses in the adult section, and then asks Donald for a book that "leaves nothing to the imagination." Donald says, "This is just what you're looking for;" and hands Fred a book. Assuming the book is obscene, Donald is guilty of promoting obscenity in the second degree because he is offering to sell Fred an obscene book in return for payment. The fact that Donald picked out a book based on Fred's description shows he had knowledge of the book's content and character.
- 2. Donald manages a movie theater. He orders a film, advertises it, and sells tickets for \$6.00 each. The film shows numerous sex acts between men and women, women and women, and men and men. Assuming the movie is obscene and that Donald is aware of its content, he has promoted obscenity in the second degree by presenting an obscene performance in return for money.
- 3. Donald takes the lead role in a play which shows numerous acts of sexual intercourse loosely tied together by a plot. Donald is paid for his appearance. Assuming the play is obscene and appearing in it is sufficient to establish a

knowledge of its content and character, Donald has promoted obscenity in the second degree by participating in an obscene performance in return for money.

Cross References:

Promote
Pornographic
Material
Performance
Pornographic for Minors
Obscenity

16.5 Promoting Child Pornography in the First Degree (§573.025)
Penalty Varies (See Below)**Elements:**

A person commits the offense of promoting child pornography in the first degree if, knowing of its content and character, (s)he:

1. possesses with intent to promote or promotes
2. child pornography that
 - a. has a child less than fourteen years of age; OR
 - b. portrays what appears to be a child less than fourteen years of age.

Penalty:

Promoting child pornography in the first degree is a class B felony, unless such material is promoted to a minor in which case it is a class A felony. No person who pleads guilty to or is found guilty of this section is eligible for probation, parole, or conditional release for a period of three calendar years.

Example:

Mr. White, who owns an adult bookstore, sells to Mr. Black a video that Mr. White knows to depict a 13-year-old girl masturbating. Mr. White has committed the offense of promoting child pornography in the first degree.

Definitions:

Knowingly
Child pornography
Sexual conduct
Sexual contact

Sexual performance
Obscenity

Related Offenses:

Promoting child pornography in the second degree	¶16.6
Abuse of a child	¶14.20
Use of a child in a sexual performance	¶14.23
Promoting a sexual performance	¶14.24

16.6 Promoting Child Pornography in the Second Degree (§573.035)
Penalty Varies (See Below)**Elements:**

A person commits the offense of promoting child pornography in the second degree if, knowing of its content and character, (s)he:

1. possesses with the intent to promote or promotes
2. child pornography that
 - a. has a child less than eighteen years of age; OR
 - b. portrays what appears to be a child less than eighteen years of age.

Penalty:

Promoting Child Pornography in the Second Degree is a Class D Felony, unless a person knowingly promotes child pornography to a minor, then it's a Class B Felony

Comments:

Both promoting child pornography in the first degree and promoting child pornography in the second degree prohibit the promotion of illicit sexual material involving young participants. The primary difference between the two statutes relates to the **age** of the **participant** involved in the prohibited sexual material. Promoting child pornography in the first degree proscribes the promotion of obscene material involving a **child**, defined under §573.010 as a person under the age of fourteen. Promoting child pornography in the second degree proscribes the promotion of obscene material or child pornography involving a **minor**, defined as a person under the age of eighteen.

Note: the penalties under both sections are enhanced if the illicit material is promoted to a minor. Also, no person found guilty or who pleads guilty under either section is eligible for probation.

Example:

Kitty buys magazines from an X-rated publishing wholesaler which depict a young child viewing her parents having intercourse. The photographs are of the actual event. Kitty and the wholesaler are both guilty of promoting child pornography in the second degree if they had knowledge of the content of the magazines. It is immaterial whether either of them considered the photographs to be obscene or pornographic.

16.7 Furnishing Pornographic Materials to Minors (§573.040)
Penalty Varies (See Below)

Elements:

A person commits the offense of furnishing pornographic materials to minors if, knowing of its content and character, (s)he:

1. a. i. knowing that a person is a minor; OR
ii. with reckless disregard as to the minority of a person
- b. furnishes to a minor, material which is pornographic for minors; OR
2. a. produces, presents, directs, or participates in a performance pornographic for minors
- b. which is furnished to a minor
- c. i. knowing the viewer is a minor; OR
ii. with reckless disregard as to the minority of the viewer; OR
3. a. furnishes, produces, presents, directs, participates in any performance, or otherwise makes available
- b. material that is pornographic for minors
- c. via computer, electronic transfer, Internet or computer network
- d. to a specific individual known to be a minor.

Penalty:

Furnishing Pornographic Materials to Minors is a class A Misdemeanor, unless the offender has previously been found guilty of an offense under the pornography statutes, a sexual offense (Chapter 566), or an Offense against the family (Chapter 568), then it's a Class E Felony.

Comments:

This section is designed to protect minors from exposure to pornographic material or performances. This section specifically deals with material that is pornographic for minors. This includes all material, which is pornographic for adults as well as some material, which may be suitable for adults but is unsuitable for minors. (See the introductory comments on "pornographic for minors.")

A defendant Violates the statute by furnishing to a minor pornographic material, or by participating in a pornographic performance, which is furnished to a minor. The defendant must be aware of the content and must either know the individual is under 18 years of age or be aware that there is a substantial probability that the person is under 18 years of age.

NOTE: The statute does not require that the supplier of pornographic materials to minors receive a payment of any kind. In other words, a defendant may be convicted under this statute whether or not he derives any gain from dispensing the material.

Examples:

1. Donald owns and operates an adult bookstore and movie theater. He allows Mike, who is obviously under age 18, to view a movie that Donald knows is filled with explicit sexual material. Donald is guilty of furnishing pornographic material to a minor if he knew Mike was under age 18 or was aware of a substantial probability that Mike was under 18.
2. Mark, who is 17 years old, goes to the window to buy a ticket at the adult theater. Mark has streaks of prematurely gray hair, a full beard, and appears to the average person to be over 21 years old. Donald sells him a ticket and allows him to see the movie. Donald is not guilty of violating the statute even though he allowed Mark to see a movie pornographic for minors if Donald did not know Mark's age and was not aware of the possibility that Mark was under 18 years of age.

Cross References:

Knowing
Reckless disregard
Minor
Pornographic for minors
Performance
Furnish
Material

Related Offenses:

Promoting pornography in the first degree	¶16.5
Promoting pornography in the second degree	¶16.6

16.8 Evidence in Pornography/Obscenity Cases (§573.050)

This section specifically sets out the type of evidence admissible in pornography/obscenity cases. It provides for testimony by those who distributed the material as well as testimony by experts.

1. In any prosecution under Chapter 573 evidence shall be admissible to show:
 - a. what the predominant appeal of the material or performance would be for ordinary adults or minors;
 - b. the literary, artistic, political, or scientific value of the material or performance;
 - c. the degree of public acceptance in this State and in the local community;
 - d. the appeal to prurient interest in advertising or other promotion of the material or performance;
 - e. the purpose of the author, creator, promoter, furnisher, or publisher of the material or performance.
2. Testimony of the author, creator, promoter, furnisher, publisher, or expert testimony, relating to factors entering into the determination of the issues of pornography/obscenity shall be admissible.
3. In any prosecution for possession of child pornography or for promoting child pornography in the first or second degree, the determination that the person who participated in the child pornography was under age 18 can be made by reasonable inference of the judge or jury after viewing the material.
4. In any prosecution for promoting child pornography in the first or second degree, no showing is required that the performance or material involved appeals to prurient interest, that it lacks serious literary, artistic, political or scientific value, or that it is patently offensive to community standards.

Comments:

Recent changes in the law make it easier to prove the elements of child pornography and make it further clear that child pornography is per se illegal.

16.9 Public Display of Explicit Sexual Material (§573.060) Penalty Varies (see below)

Elements:

A person commits the offense of public display of explicit sexual material if:

1.
 - a. (s)he recklessly exposes, places, exhibits or in any fashion displays
 - b. explicit sexual material;
 - c. in any location, public or private, AND
 - d. in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision as viewed from a street, highway, public sidewalk, property of others, any portion of the person's store, the exhibitor's store or property, AND
 - e. item and material other than this material are offered for sale or rent to the public OR
2.
 - a. (s)he knowingly fails to promptly remove
 - b. a public display of explicit sexual material
 - c. on property (s)he possesses
 - d. after learning it exists.

Penalty:

Class A Misdemeanor, unless the offender is a repeat offender under the pornography statutes, then it's a Class E Felony.

Comments:

This section prohibits the showing of explicit sexual material in a place easily seen by the general public. Its purpose is to protect those simply passing by who may not choose to view such material.

A defendant violates the statute by either setting up (or leaving up) an explicit sexual display within the public's view. Explicit sexual material means pictorial or three-dimensional materials which show masturbation, deviate sexual intercourse, sexual intercourse, physical stimulation, or sadomasochistic abuse excluding works of art. The individual must be aware of the contents of the display and aware that it can be seen by the public.

Example:

Donald owns a bookstore. He places a display in his front window to advertise a new book. The advertisement shows a man and woman engaging in sexual intercourse. The display is clearly visible and large enough to be seen from the sidewalk and from the street. Donald has violated the statute.

NOTE: It makes no difference that the display is set up on private property belonging to Donald. It constitutes a public display as long as it can be seen and the subject matter recognized from a street, sidewalk, or another's property. In other words, to display publicly is to place in public view (See §573.010(2)).

Cross References:

Knowingly
Display publicly
Explicit sexual material
Deviate sexual intercourse
Sexual intercourse
Sadomasochistic abuse

16.10 Coercing Acceptance of Obscene Material (§573.065)
Class E Felony

Elements:

A person commits the offense of coercing acceptance of obscene material if such person knowingly:

1. a. requires acceptance
b. of obscene material
c. as a condition to any sale, allocation, consignment, or delivery of any other material; OR
2. a. denies any franchise or imposes any penalty, financial, or otherwise
b. by reason of the failure or refusal of any person
c. to accept any material obscene or pornographic for minors.

16.11 Sexual Exploitation of a Minor (§573.023)
Penalty Varies (See Below)

Elements:

A person commits the offense of sexual exploitation of a minor if (s)he:

1. knowingly or recklessly photographs, films, videotapes, produces, or otherwise creates
2. a. obscene material with a minor, OR
b. child pornography.

Penalty:

Sexual exploitation of a minor is a class B felony, unless the minor is a child (under the age of fourteen), in which case it is a class A felony.

Comments:

This section prohibits the creation of any type of material (photographs, movies, plays, etc...) which is obscene or child pornography, utilizing a minor (any person under age eighteen) as a participant. Violation of this statute is a class B felony,

however if the minor is a child (under the age of fourteen) the offense is a class A felony.

16.12 Underage Dancing in Adult Cabaret (§573.509) Class A Misdemeanor

Elements:

This offense is committed when the proprietor of an adult cabaret permits any person under the age of nineteen to dance at such an establishment.

16.13 Regulation of Sexually Oriented Businesses

16.13A Definitions:

“Nudity” or “state of nudity” – the showing of the human genitals, pubic area, vulva, anus, anal cleft, or the female breast with less than a fully opaque covering of any part of the nipple or areola.

“Semi-nude” or “state of semi-nudity” – the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at such point, or the showing of the male or female buttocks. Such definition includes the lower portion of the human female breast, but shall not include any portion of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provide the areola is not exposed in whole or in part.

“Sexually oriented business” – an adult bookstore or adult video store, an adult cabaret, an adult motion picture theater, a semi-nude model studio, or a sexual encounter center.

“Sexual encounter center” – a business or commercial enterprise that, as one of its principal purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between two or more persons when one or more of the persons is semi-nude.

16.13B Location (§573.531.1)

This offense is committed when a defendant:

1. establishes a sexually oriented business,
2. within one thousand feet,
3. of any preexisting
 - a) primary or secondary school,
 - b) house of worship,
 - c) state-licensed day care facility,
 - d) public library,
 - e) public park,
 - f) residence, or
 - g) other sexually oriented business

16.13C Ownership (§573.531.2)

This offense is committed when a defendant:

1. establishes a sexually oriented business, and
2. has an influential interest in the sexually oriented business, and
3. has been convicted or pled guilty to a specified criminal act, and
4. for which less than eight years has elapsed since date of conviction or release from confinement.

16.13D Nudity (§573.531.3)

This offense is committed when a defendant:

1. knowingly,
2. appears in a state of nudity,
3. in a sexually oriented business.

16.13E Stage Distance (§573.531.4)

This offense is committed when a defendant:

1. as an employee,
2. in a sexually oriented business,
3. knowingly,
4. appears semi-nude, AND
5. is less than six feet from all patrons, OR
6. the stage is not fixed, OR
7. the stage is less than 18 inches from the floor, OR
8. the room is less than six hundred square feet.

16.13F Touching Prohibited (§573.531.5)

This offense is committed when a defendant:

1. as an employee,
2. in a sexually oriented business,
3. knowingly touches a patron or the clothing of a patron

16.13G Video Viewing Booth Regulation (§573.531.6.(1)-(4))

This offense is committed when a sexually oriented business exhibits video on the premises where the emphasis is on the display of specified sexual activities or specified anatomical areas and fails to follow the following requirements:

- a. an unobstructed view from the operator's station of every area of the premises, including the interior of each viewing room;
- b. the operator's station shall not exceed thirty-two square feet of floor area;
- c. the view must be by direct line of sight from the operator's station; and
- d. there must be at least one employee situated at an operator's station at all times when there is a patron in the area to be monitored.

16.13H Hours of Operation (§573.531.8)

This offense is committed when an operator of a sexually oriented business allows or permits the sexually oriented business to be open or remain open between the hours of 12:00 midnight and 6:00 am on any day.

16.13I Alcohol Prohibited (573.521.9)

No person shall knowingly or intentionally sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

16.13J Minors Prohibited (573.531.10)

No person shall knowingly allow a person under the age of eighteen years on the premises of a sexually oriented business.

16.14 Nonconsensual Dissemination or Threat of Nonconsensual Dissemination Private Sexual Images (§§573.110, 573.112)**16.14A Definitions (§573.110)**

As used in §573.110 and §573.112, the following terms mean:

"Computer", a device that accepts, processes, stores, retrieves, or outputs data and includes, but is not limited to, auxiliary storage and telecommunications devices connected to computers;

"Computer program", a series of coded instructions or statements in a form acceptable to a computer that causes the computer to process data and supply the results of the data processing;

"Data", a representation in any form of information, knowledge, facts, concepts, or instructions including, but not limited to, program documentation, that is prepared or has been prepared in a formalized manner and is stored or processed in or transmitted by a computer or in a system or network. Data is considered property and may be in any form including, but not limited to, printouts, magnetic or optical storage media, punch cards, data stored internally in the memory of the computer, or data stored externally that is accessible by the computer;

"Image", a photograph, film, videotape, digital recording, or other depiction or portrayal of an object, including a human body;

"Intimate parts", the fully unclothed, partially unclothed, or transparently clothed genitals, pubic area, or anus or, if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing;

"Private mobile radio services", private land mobile radio services and other communications services characterized by the public service commission as private mobile radio services;

"Public mobile services", air-to-ground radio telephone services, cellular radio telecommunications services, offshore radio, rural radio services, public land mobile telephone services, and other common carrier radio communications services;

"Sexual act", sexual penetration, masturbation, or sexual activity;

"Sexual activity", any:

- (a) Knowing touching or fondling by the victim or another person or animal, either directly or through clothing, of the sex organs, anus, or breast of the victim or another person or animal for the purpose of sexual gratification or arousal;
- (b) Transfer or transmission of semen upon any part of the clothed or unclothed body of the victim for the purpose of sexual gratification or arousal of the victim or another;
- (c) Act of urination within a sexual context;
- (d) Bondage, fetter, sadism, or masochism; or
- (e) Sadomasochism abuse in any sexual context.

16.14B Nonconsensual Dissemination of Private Sexual Images**(§ 573.110)****Class D Felony**

A person commits the offense of nonconsensual dissemination of private sexual images if (s)he:

1. Intentionally disseminates an image
2. with the intent to harass, threaten, or coerce another person:
 - a. Who is at least eighteen years of age;
 - b. Who is identifiable from the image itself or information displayed in connection with the image; and
 - c. Who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; OR
3. Obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; AND
4. Knows or should have known that the person in the image did not consent to the dissemination.

Penalty:

The commission of this offense is a class D felony. In addition to the criminal penalties for this offense, a successful private cause of action under § 573.110.7 shall result in an award equal to \$10,000 or actual damages, whichever is greater, and also include attorney's fees. Humiliation or embarrassment shall be an adequate showing that the plaintiff incurred damages.

Comment:

A person is not guilty of committing this offense if the intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed if:

- a. the dissemination is made for the purpose of a criminal investigation that is otherwise lawful;
- b. the dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct;
- c. if the image involves voluntary exposure in a public or commercial setting; or
- d. if the dissemination serves a lawful public purpose.

16.14C Threatening Nonconsensual Dissemination of Private Sexual Images (§ 573.112)
Class E felony

A person commits the offense of threatening the nonconsensual dissemination of private sexual images if (s)he:

1. Gains or attempts to gain anything of value, OR
2. Coerces or attempts to coerce
3. Another person to act or refrain from acting,
4. By threatening to disseminate an image of another person, which was obtained under circumstances in which a reasonable person would know or understand that the image was to remain private, against the will of such person:
 - a. Who is at least eighteen years of age;
 - b. Who is identifiable from the image itself or information displayed in connection with the image; and
 - c. Who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part.

16.15 Enabling Sexual Exploitation of a Minor (§573.024)
Class E Felony (first offense)
Class C Felony subsequent offenses

A person commits the offense of enabling sexual exploitation of a minor if (s)he:

1. While acting with criminal negligence;
2. Permits or allows;
3. A violation of one of the following criminal statutes:
 - a. Sexual trafficking of a child in the first degree (§566.210);
 - b. Sexual trafficking of a child in the second degree (§566.211);
 - c. Promoting obscenity in the first degree (§573.020);
 - d. Sexual exploitation of a minor (§573.023);
 - e. Promoting child pornography in the first degree (§573.025);
 - f. Promoting obscenity in the second degree (§573.030);
 - g. Promoting child pornography in the second degree (§573.035);
 - h. Child used in sexual performance (§573.200); OR
 - i. Promoting sexual performance by a child (§573.205).

**16.16 Patronizing a Sexual Performance by a Child (§573.206)
Class C Felony**

A person commits the offense of patronizing a sexual performance of a child if (s)he:

1. Obtains, solicits, or participates;
2. In a sexual performance;
3. By a child under 18 years of age

**16.17 Providing Explicit Sexual Material to a Student (§573.550)
Class A Misdemeanor**

A person commits the offense of providing explicit sexual material to a student if (s)he:

1. While affiliated with a public or private elementary or secondary school in an official capacity;
2. Knowingly (knowing that it is explicit sexual material);
 - a. Provides (or assigns, supplies, distributes, loans, or coerces acceptance of or the approval of the providing); OR
 - b. Possesses with the intent to provide (or assign, supply, distribute, loan, or coerce acceptance of or the approval of the providing);
3. Explicit sexual material;
4. To a student.

Definitions:

"Explicit sexual material" - any pictorial, three-dimensional, or visual depiction, including any photography, film, video, picture, or computer generated image, showing human masturbation, deviate sexual intercourse as defined in §566.010, sexual intercourse, direct physical stimulation of genitals, sadomasochistic abuse, or emphasizing the depiction of post pubertal human genitals; provided, however, that works of art, when taken as a whole, that have serious artistic significance, or works of anthropological significance, or materials used in science courses, including but not limited to materials used in biology, anatomy, physiology, and sexual education classes shall not be deemed to be within this definition.

"Person affiliated with a public or private elementary or secondary school in an official capacity" - an administrator, teacher, librarian, media center personnel, substitute teacher, teacher's assistant, student teacher, law

enforcement officer, school board member, school bus driver, guidance counselor, coach, guest lecturer, guest speaker, or other non-school employee who is invited to present information to students by a teacher, administrator, or other school employee. Such term shall not include a student enrolled in the elementary or secondary school.

Chapter 17 **Affecting Public Safety**

17.1 Introduction

Intoxication-related offenses pertaining to several modes of transportation (driving, boating, or flying) are included together in Chapter 577.

17.2 Introduction to Alcohol Related Offenses (§577.023)

An **intoxication-related traffic offense** is: (1) driving while intoxicated (DWI); or (2) driving with excessive blood alcohol content (BAC); or (3) driving under the influence of alcohol or drugs in violation of a state law, county or municipal ordinance, any federal offense, or any military offense; or (4) an offense in which the defendant was operating a vehicle while intoxicated and another person was injured or killed in violation of any state law, county or municipal ordinance, any federal offense, or any military offense.

Enhanced Penalties for Repeat Offenders:

Included among these defined terms are a series of definitions relating to repeat offenders. A repeat offender category for intoxication-related offenses exists (“habitual offender”). A habitual offender may also qualify as a **dangerous felon**, requiring any individual being convicted as one to serve eighty-five percent of any sentence imposed. The entire framework of the repeat offender categories apply to intoxication-related driving offenses and boating offenses.

Repeat Offender Categories – Intoxication-Related Offenses

Prior Offender	1 intoxication-related traffic offense within 5 years of current offense.
Prior Boating Offender	1 intoxication-related boating offense within 5 years of current offense.
Persistent Offender	2 or more intoxication-related offenses committed on separate occasions.

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Persistent Boating Off.	2 or more intoxication-related boating offenses committed on separate occasions.
Aggravated Offender	3 or more intoxication-related traffic offenses; or 2 or more intoxication-related traffic offenses committed on separate occasions where at least 1 offense involved the injury or death of another person.
Aggravated Boating Off.	3 or more intoxication-related boating offenses; or 1 or more intoxication-related boating offenses committed on separate occasions where at least 1 offense involved the injury or death of another person.
Chronic Offender	4 or more intoxication-related traffic offenses; or 3 or more intoxication-related traffic offenses committed on separate occasions where at least 1 offense involved the injury or death of another person; or 2 or more intoxication-related traffic offenses committed on separate occasions where both offenses involved the injury or death of another person.
Chronic Boating Off.	4 or more intoxication-related boating offenses; or 3 or more intoxication-related boating offenses committed on separate occasions where at least 1 offense involved the injury or death of another person; or 2 or more intoxication-related boating offenses committed on separate occasions where both offenses involved the injury or death of another person.
Habitual Offender	5 or more intoxication-related traffic offenses; or 4 or more intoxication-related traffic offenses committed on separate occasions where at least 1 offense involved the injury or death of another person; or 3 or more intoxication-related traffic offenses committed on separate occasions where at least 2 offenses involved the injury or death of another person; or while driving while intoxicated, the defendant acted with criminal negligence to: cause the death of any person not a passenger in the vehicle operated by defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined by §301.010, or the highway's right-of-way; or cause the death of two or more persons; or cause the death of any person while (s)he has a blood alcohol content of at least eighteen-

Habitual Boating Off.

hundredths of one percent by weight of alcohol in such person's blood; 5 or more intoxication-related boating offenses; or 4 or more intoxication-related boating offenses committed on separate occasions where at least 1 offense involved the injury or death of another person; or 3 or more intoxication-related boating offenses committed on separate occasions where at least 2 offenses involved the injury or death of another person; or while boating while intoxicated, the defendant acted with criminal negligence to: cause the death of any person not a passenger in the vessel operated by the defendant, including the death of an individual that results from the defendant's vessel leaving the water; or cause the death of two or more persons; or cause the death of any person while (s)he has a blood alcohol content of at least eighteen-hundredths of one percent by weight of alcohol in such person's blood;

The Revised Criminal Code has applied a standardized format to the intoxication-related offenses. A significant portion of the restructuring involved in the driving while intoxicated offenses included **graduating** the levels of punishment by the levels of injury caused.

17.3 Driving While Intoxicated (§577.010)

Penalty Varies (See Below)

Elements:

A person commits the offense of driving while intoxicated if that (s)he:

1. operates a vehicle
2. while in an intoxicated or drugged condition.

Penalty:

First offense – class B misdemeanor.

Prior offender; **or** if a person less than 17 years of age is present in the vehicle – class A misdemeanor.

Persistent offender; **or** the defendant acts with criminal negligence to cause physical injury to another person – class E felony.

Aggravated offender; **or** the defendant acts with criminal negligence to cause physical injury to a law enforcement officer or emergency personnel; **or** the defendant acts with criminal negligence to cause serious physical injury to another person – class D felony.

Chronic offender; **or** the defendant acts with criminal negligence to cause serious physical injury to a law enforcement officer or emergency personnel; **or** the defendant acts with criminal negligence to cause the death of another person – class C felony.

Habitual offender; **or** the defendant acts with criminal negligence to cause the death of a law enforcement officer or emergency personnel; **or** the defendant acts with criminal negligence to cause the death or two or more persons the defendant acts with criminal negligence to cause the death of any person not a passenger in the vehicle operated by the defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined in §301.010, or the highway's right-of-way; **or** the defendant acts with criminal negligence to cause the death of two or more persons; **or** the defendant acts with criminal negligence to cause the death of any person while (s)he has a blood alcohol content of at least eighteen-hundredths of one percent by weight of alcohol in such person's blood – class B felony.

Has previously been found guilty of parts listed under the class B felony and on a second or subsequent violation; the defendant acts with criminal negligence to cause the death of a law enforcement officer or emergency personnel; **or** the defendant acts with criminal negligence to cause the death or two or more persons the defendant acts with criminal negligence to cause the death of any person not a passenger in the vehicle operated by the defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined in §301.010, or the highway's right-of-way; **or** the defendant acts with criminal negligence to cause the death of two or more persons; **or** the defendant acts with criminal negligence to cause the death of any person while (s)he has a blood alcohol content of at least eighteen-hundredths of one percent by weight of alcohol in such person's blood – class A felony

Comments:

A driver is guilty under this section if at the time the person is operating a vehicle the person is in an intoxicated or drugged condition.

Operating: defined by statute as physically driving or operating a vehicle. A defendant was held to be "operating" where the automobile was parked with the engine running and the defendant was behind the steering wheel asleep. The operation need not be on a public street.

Intoxicated condition: defined by statute as under the influence of alcohol, a controlled substance, or drug, or any combination thereof. Operating a vehicle in violation of §577.010 or §577.012 or any county or municipal ordinance prohibiting driving while intoxicated or driving under the influence of alcohol shall be **dismissed with prejudice** if a chemical analysis of the defendant's breath, blood, saliva, or urine . . . demonstrates that there was less than eight-hundredths of one percent of alcohol in the defendant's blood unless there is additional evidence presented that would cause the court to find a dismissal unwarranted. A DWI charge based on less than .08 percent BAC would need some additional evidence presented such as the following:

1. the test results are unreliable due to lapse of time between the test and the violation;
2. there is evidence that the arrestee was under the influence of a controlled substance or drug, with or without alcohol; OR
3. there is substantial evidence of intoxication from the physical observations of witnesses or admissions of the defendant.

A defendant is **presumptively intoxicated** if there is eight-hundredths of one percent (.08 percent) or more of alcohol in the person's blood. Any concentration of a controlled substance in a person's blood is an offense. If suspected, a defendant should be taken to a hospital for a blood test.

Evidence of a river's blood alcohol content is not mandatory to prove intoxication, but may be shown by the person's impaired ability to drive, and statements made by the operator.

To further the evidence of intoxication, the arresting officer should note and include in the report such things as: an odor of an alcoholic beverage on the driver or in the vehicle, empty alcoholic beverage containers in vehicle, river's failure of sobriety tests, river's speech slurred, river's eyes bloodshot or glassy, driver was unable to understand simple verbal instructions, and river's lack of coordination. "It is most important to indicate if the vehicle was being operated in an unsafe or reckless manner due to the intoxication."

A person who operates a vehicle is **presumed to have consented** to a chemical

test or tests of his/her breath, blood, saliva, or urine to determine the alcohol or drug content of his/her blood. If the driver refuses to submit to a chemical test, the arresting officer should make a report of that fact to the Director of Revenue (§577.041). If an officer wants a blood draw, then the officer needs to obtain a search warrant unless exigent circumstances exist. The exigent circumstance must be more than the dissipation of the suspect's blood alcohol level that may occur during the normal time required to obtain a search warrant.

Example:

Donald has parked his vehicle outside the front entrance to 'Sally's Saloon and is waiting to pick up his friend. Although the vehicle is stopped, the engine is running and Donald is behind the steering wheel when approached by an officer. It is later determined that Donald has .08 percent alcohol content in his blood. Donald is guilty of operating a motor vehicle in an intoxicated condition since Donald was in physical control of the vehicle. (See section on administrative license suspensions.)

Cross References:

Definitions
Operates
Intoxicated condition

Related Offense:

Driving with excessive blood alcohol ¶17.4

17.4 Driving with Excessive Blood Alcohol BAC (§577.012)
Penalty Varies (See Below)

Elements:

A person commits the offense of driving with excessive blood alcohol if (s)he:

1. operates a vehicle while having eight hundredths of one percent or more by weight of alcohol in his or her blood; **or**
2. a commercial motor vehicle while having four one-hundredths of one percent or more by weight of alcohol in his or her blood.

Note: Zero Tolerance makes it illegal per se for people under the age of 21 to drive while the weight of alcohol in their blood is .02% or more. However, this is an administrative charge only.

Penalty:

First offense – class B misdemeanor.

Prior offender – class A misdemeanor.

Persistent offender – class E felony.

Aggravated offender – class D felony.

Chronic offender – class C felony.

Habitual offender – class B felony.

17.5Boating While Intoxicated (577.013)

Penalty Varies (See Below)

Elements:

A person commits the offense of boating while intoxicated if (s)he:

1. operates a vessel
2. while in an intoxicated condition.

Penalty:

First offense – class B misdemeanor.

Prior boating offender; or a person less than 17 years of age is present in vessel – class A misdemeanor.

Persistent boating offender; or the defendant acts with criminal negligence to cause physical injury to another person – class E felony.

Aggravated boating offender; or the defendant acts with criminal negligence to cause physical injury to a law enforcement officer or emergency personnel; **or** the defendant acts with criminal negligence to cause serious physical injury to another person – class D felony.

Chronic boating offender; or the defendant acts with criminal negligence to cause serious physical injury to law enforcement officer or emergency personnel; **or** defendant acts with criminal negligence to cause the death of another person – class C felony.

Habitual boating offender; or the defendant acts with criminal negligence to cause the death of a law enforcement officer or emergency personnel; **or** the defendant acts with criminal negligence to cause the death of two or more persons – class B felony.

Habitual boating offender (second or subsequent violation); or the defendant acts with criminal negligence to cause the death of a law enforcement officer or emergency personnel (second or subsequent violation); **or** the defendant acts with

criminal negligence to cause the death of two or more persons (second or subsequent violation) – class A felony.

17.6 Boating with Excessive BAC (§577.014)

Penalty Varies (See Below)

Elements:

A defendant operates a vessel while having eight-hundredths of one percent or more by weight of alcohol in his or her blood.

Penalty:

First offense – class B misdemeanor.

Prior boating offender – class A misdemeanor.

Persistent boating offender – class E felony.

Aggravated boating offender – class D felony.

Chronic boating offender – class C felony.

Habitual boating offender – class B felony.

17.7 Operating an Aircraft while Intoxicated (577.015)

Class C Misdemeanor or Class A Misdemeanor

Elements:

1. A person, while in an intoxicated condition, knowingly operates an aircraft or knowingly acts as a copilot, flight engineer, or flight navigator for an aircraft while in operation (Class C Misdemeanor); or
2. Persons who have been previously found guilty of operating an aircraft while in an intoxicated condition or with an excessive BAC (Class A Misdemeanor).

17.8 Operating an Aircraft with Excessive BAC (577.016)

Class C Misdemeanor or Class A Misdemeanor

Elements:

A person knowingly operates any aircraft or knowingly acts as a copilot, flight engineer, or flight navigator for an aircraft while in operation:

1. With four one-hundredths of one percent or more by weight of alcohol in his or her blood; or within eight hours after the consumption of any alcoholic beverage (Class C Misdemeanor); or
2. Having previously been found guilty of operating an aircraft while intoxicated or with an excessive BAC (Class A Misdemeanor).

17.9 Minor in Possession of Alcohol (§311.325)**Misdemeanor****Elements:**

A person commits the offense of being a minor in possession of alcohol if (s)he is under the age of twenty-one and, who:

1. purchases or attempts to purchase; OR
2. has in his/her possession, any intoxicating liquor; OR
3. who is visibly in an intoxicated condition; OR
4. has a detectable blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol in such person's blood.

Note:

Any person who is in violation of this statute has implicitly given his or her implied consent, upon an officer's request, to take a chemical test of his or her breath, blood, saliva, or urine for the purpose of determining his or her BAC. The statute limits the number of tests to two, one of which may be requested by the defendant at his or her own expense and to be done by a person of his or her own choosing.

1st offense = up to a \$300 fine.

2nd offense = up to one year in jail or a fine up to \$1000 or both.

17.10 Consumption of Alcoholic Beverages in a Moving Motor Vehicle Prohibited (§577.017)
Violation-does not appear on DOR records**Elements:**

A person commits the infraction of consumption of alcoholic beverages in a moving motor vehicle if (s)he:

1. consumes any alcoholic beverage
2. while operating a moving motor vehicle
3. upon the highways (as defined in §301.010)

Comments:

This statute is commonly referred to as the open container law. The penalty is an infraction. The positive application for law enforcement is that it will provide the probable cause needed for an officer to stop and check the driver for possible DWI.

**17.11 Tests for Determining Alcoholic Content of Blood
(§577.020)**

Section 577.020 expressly authorizes tests "other than breath tests." Blood, saliva, and urine tests may also be administered to determine the presence of drugs or blood alcohol content.

The following points should be remembered:

1. Right to counsel:
 - a. the arrestee may call his/her lawyer from the station, or, if his/her lawyer is there, (s)he may consult with him/her before taking the breath test, but the defendant need not be advised of this;
 - b. the arrestee does not have a constitutional right to have his/her counsel present when (s)he takes the breath test, so you don't have to wait until counsel arrives before administering the test. However, if counsel is present (s)he may not be excluded.
2. Unequivocal refusal:
 - a. a refusal to take the breath test must be express and unequivocal for it to warrant a license revocation;
 - b. a test may not be administered against the will of the driver.
3. Self-incrimination:
The use of the breath test does not violate a person's privilege against self-incrimination.
4. Testing:
 - a. a person has no right to have any intoxication test administered other than the breathalyzer test;
 - b. a refusal to take the breathalyzer test is sufficient to warrant the revocation of a driver's license, even though the arrestee requests that another type of test be administered.
5. An officer may not administer any test unless (s)he possesses a valid permit issued by the State Division of Health for this purpose.
6. Tests may be administered to any person who is dead, unconscious, or is in a condition rendering him/her incapable of refusing to take a test without that person's express consent.

If the person who is tested, requests, full information concerning the test shall be made available to him/her.

Note: §577.020 Chemical tests for alcohol content of blood-consent implied, was amended to expand the circumstances under which a person is deemed to have given consent to a chemical test to determine alcohol or drug content of the person's blood, to include:

- * a person who while operating a vehicle, is involved in a motor vehicle collision resulting in a fatality or serious physical injury, and is arrested by uniform traffic ticket for a violation of any state law, or county or municipal ordinance (except equipment violations); and
- * a person involved in a vehicle collision, which resulted in a fatality.

17.12 Arrest Without Warrant When (§544.218)

Elements:

An arrest without a warrant by a law enforcement officer, including a uniformed member of the State Highway Patrol, for a violation of §577.010 (driving while intoxicated) or for a violation of §577.012 (driving with excessive blood alcohol) is lawful whenever: the arresting officer has reasonable grounds to believe that the person to be arrested has violated the above sections (whether or not the violation occurred in the presence of the arresting officers); and when such arrest is made within one and one-half (1- 1/2) hours after the claimed violation occurred, unless the person to be arrested has left the scene of an accident or has been removed from the scene to receive medical treatment, in which case such arrest without warrant may be made more than one and one-half hours after such violation occurred.

Comments:

This section gives law enforcement officers the power to arrest a person without a warrant on a misdemeanor not committed in his/her presence when there is probable cause to believe that person has violated §577.010 or §577.012. Remember that the officer retains his/her warrantless felony arrest powers in vehicular manslaughter or vehicular injury cases. This section provides for quick action against an intoxicated driver when there has been a prompt and reliable citizen's report.

17.13 Refusal to Submit to Chemical-Test-Revocation of License--Hearing (§577.041)

If an arresting officer requests a person under arrest to submit to a chemical test, stating his reason for the request (and), informing the person that **evidence of his/her refusal to take the test may be used against him/her and that** his/her license (may be) **shall be immediately revoked if (s)he refuses to take the test, and allowing the person 20 minutes to contact an attorney** and the person under arrest refuses, no test shall be given.

If the person does refuse to submit to the test, the arresting officer, **shall, on behalf of the Director of Revenue, serve the notice of license revocation personally upon the arrested person and shall take possession of any license to operate a motor vehicle issued by this state which is held by that person.** The arresting officer shall issue a temporary permit, on behalf of the Director of Revenue, which is valid for fifteen days and shall also give the person a notice of his/her right to file a petition for review to contest the license revocation.

The arresting officer shall make a sworn report to the Director of Revenue, which shall include the following:

- that the officer has reasonable grounds to believe: (1) that the arrested person was driving a motor vehicle while in an intoxicated or drugged condition; or (2) that the person stopped, being under the age of twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or (3) that the person stopped, being under the age of twenty one years was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer has reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;
 - that the person refused to submit to a chemical test;
 - whether the officer secured the license to operate a motor vehicle of the person;
 - whether the officer issued a fifteen-day temporary permit;
 - copies of the notice of revocation, the fifteen-day temporary permit, and the notice of the right to file a petition for review (notices and permit may be combined into one document); AND
 - any license to operate a motor vehicle which the officer has taken into possession.
1. After receiving the officer's report, the Director shall revoke the license of the person refusing to take the test for a period of not more than one year; or if the person is a non-resident, his/her operating permit or privilege shall be revoked for no more than one year; or if the person is a resident without a license or permit to operate a motor vehicle in this State, an order shall be issued denying the person issuance of a license or permit for a period of no more than one year.
 2. If a person's license has been revoked because of his refusal to submit to a chemical test, he may (request) **petition for** a hearing before a circuit or associate circuit court in the county in which the arrest or stop occurred. **The person may request such court to issue an order staying the revocation until such time as the petition for review can be heard.** If the court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the Director of Revenue and shall send a copy of such order to the Director. Such order shall serve as proof of

- the privilege to operate a motor vehicle in this State and the Director shall maintain possession of the person's license to operate a motor vehicle until termination of any revocation.** Upon his/her request, the clerk of the court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the **Director of Revenue**. At the hearing, the court shall determine only:
- a. whether or not the person was arrested or stopped;
 - b. whether or not the officer had reasonable grounds to believe: (1) that the person was driving a motor vehicle in an intoxicated or drugged condition; or (2) that the person stopped, being under the age of twenty one years, was driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more by weight; or (3) that the person stopped, being under the age of twenty-one years, was committing a violation of the traffic laws of the state, or political subdivision of the state, and such officer had reasonable grounds to believe, after making such stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and
 - c. whether or not the person refused to submit to the test.
3. If the court determines any issue not to be in the affirmative, (s)he shall order the Director to reinstate the license or permit to drive.
 4. Request for review shall go to the head of the docket of the court wherein filed.

17.14 Automatic Administrative Suspension or Revocation Law (\$\$302.500-302.540)

In addition to any consequences of a criminal conviction, the Missouri Department of Revenue may administratively suspend or revoke a person's driver's license if they are arrested while driving with a blood alcohol concentration in excess of the legal limit.

Definitions:

Suspension-the loss of driving privileges for 30 days up to 1 year.

Revocation-the loss of driving privileges for 1 year or more. Revocation can only be given if a person's driving record shows a previous driving alcohol related offense or offenses within the preceding 5 years.

NOTE: Administrative suspension or revocation can be invoked when the arrest was made at a roadblock or field sobriety checkpoint. If the arrested person is not a Missouri resident, the officer cannot confiscate an out-of-state-driver's license. The person's privilege to drive in Missouri can be suspended, however.

If a person is arrested upon probable cause to believe that the person was driving with a blood alcohol concentration of .08 percent or more, or where a person less than twenty-one years of age was stopped upon probable cause to believe such person was driving while intoxicated or driving with excessive blood alcohol content, or upon probable cause to believe such person violated a state, county or municipal traffic offense and such person was driving with a blood alcohol content of two-hundredths of one percent (.02 percent) or more by weight, that person's license is automatically suspended.

If the test results indicate that the driver has .08 percent or more blood alcohol content, or where he driver is less than twenty-one years of age and the results show that there is .02 percent or more blood alcohol content, then the police officer must:

1. serve a notice of suspension on the driver (Department of Revenue form, see Appendix #1);
2. seize and take possession of the driver's license, (if issued by the State of Missouri);
3. issue a temporary 15 day permit to the person arrested (Department of Revenue form, see Appendix #1);

NOTE: of course the person should not be released and allowed to drive while intoxicated.

4. serve on the arrestee a notice of rights and responsibilities (Department of Revenue form, see Appendix #2).

A copy of the temporary driving permit and notice of suspension, a copy of the police report (Appendix #4A/D), and the driver's license shall then be forwarded by the officer to the Department of Revenue.

The arrestee must make a request for an administrative hearing to review the suspension of driving privileges within the 15-day period of the person's temporary driving privilege (Appendix #1). If a timely administrative hearing is requested, the suspension is stayed pending the hearing. The Department of Revenue issues the arrestee a temporary driving permit which shall be valid until the scheduled date of the hearing. This permit expires at the time of the administrative hearing. Delays or continuances requested by the driver without good cause do not stay the suspension of driving privileges.

The administrative revocation hearing is a civil action independent of the criminal charges that resulted from the same arrest. The administrative and criminal suspension revocation periods run concurrently.

The only issue at the administrative hearing is whether there was (1) probable cause to believe (2) that the arrestee was driving a motor vehicle (3) with a blood alcohol concentration of .08 percent or more; or in the case of a driver less than twenty one years of age, whether there was probable cause to believe that the arrestee was driving while intoxicated or driving with excessive blood alcohol content, or whether there was probable cause to believe the arrestee was violating a state, county, or municipal traffic offense, and such person was driving with a blood alcohol concentration of .02 percent or more. If the hearing examiner finds the above by a preponderance of evidence, then:

1. if the person has no prior alcohol related enforcement contacts, the license is suspended for 30 days followed by a 60-day restricted driving privilege enabling the person to drive only to and from work and to and from an alcohol education or treatment program. For reinstatement the person must file proof of financial responsibility, complete an alcohol education/rehabilitation program, and pay a reinstatement fee of \$20.00. **Note:** see Zero Tolerance note.
2. if the person has prior alcohol related enforcement contacts within the prior five years, the person's driving privileges are revoked for one year. For reinstatement, the person must file proof of financial responsibility, pay a reinstatement fee of \$20.00 and take and pass a complete driver's examination.

Alcohol related enforcement contacts include: any conviction in this state or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration (DWI & BAC); any administrative suspensions or revocations; or prior refusals to submit to a chemical test.

The arrestee may appeal an administrative suspension/revocation by filing a petition for a trial de novo in circuit court within 15 days of the administrative decision.

Note: The Zero Tolerance Law includes:

Zero Tolerance: Makes it illegal per se (in and of itself) for people under the age of 21 to drive with any measurable alcohol in their system. That measurable level is set at .02. The charges under this law are administrative only, no criminal charges are included under Zero Tolerance. If convicted, the person will lose his/her license for 90 days, with no driving privileges the first 30 days and restricted driving privileges the next 60 days. A first offender of the zero tolerance provisions need not file proof of financial responsibility to regain driving privileges. If, however, the minor tests .08 or above, they fall under the adult DWI law. The suspension record with the Department of Revenue will be automatically expunged under Zero tolerance within two years, or the person's 21st birthday, whichever comes first, provided they commit no other alcohol-related offense during such time.

Sunset Provision on PBTs The June 30, 1996 sunset clause provision was eliminated. This means the Missouri State Highway Patrol can continue to use PBTs in DWI cases without it counting as one of the two allowable chemical tests.

Control of the Car: The definition of operating a vehicle has been changed. No longer does §577.001 contain the wording that includes being in physical control of the vehicle. The statute now reads as follows: "As used in Chapter 577, the term "drive," "driving," "operates" or "operating" means physically driving or operating a motor vehicle." The words "or being in actual physical control of" were taken out.

BAC Charge: Changes the point assessment for a BAC violation from a six (6) to an eight (8) point violation which will be an automatic license revocation under the point system.

Reporting of Alcohol-Related Traffic Arrests: All alcohol-related traffic arrests are now required to be reported to the Missouri State Highway Patrol. Before this change, only second and subsequent arrest were required to be reported.

Telephone Hearing: allows administrative hearings of driver's license suspensions or revocations to be conducted by telephone, or upon request in the county where the arrest was made.

Video-Taped Evidence: If a DWI arrest is videotaped, that tape shall be entered as evidence in court.

Education: The Department of Revenue (DOR) is now required to furnish all minors applying for a driver's license with educational information on drinking and driving. The Missouri Division of Highway Safety will supply DOR with these materials.

SATOP (Substance Abuse Traffic Offender's Program): Requires anyone whose driving privilege has been suspended or revoked under the point system, for an alcohol-related traffic offense, to complete SATOP as a prerequisite for reinstatement. Only administrative suspensions were required before this change. The department may waive the requirement upon completion of a comparable program or upon good cause shown. Also allows for judicial review of SATOP assessment by the Associate Circuit Court. The Court may waive the SATOP requirement upon "good cause shown." The Court will consider the person's driving record, circumstances surrounding the offense and likelihood of the person committing the offense in the future. Requires those who refuse a chemical test to go through SATOP before their license is reinstated.

DWI Courts: "A DWI docket or court established under §478.007 may grant a limited driving privilege to a participant in or graduate of the program who would otherwise be ineligible for each privilege under another provision of law. The DWI docket or court shall not grant a limited driving privilege to a participant during his or her initial forty-five days of participation." (§302.309(9)) A participant must plead guilty. A participant must have had a BAC of .15 or higher which precludes refusal cases, or a participant must have one or more intoxication related traffic offenses, or a participant must have two or more previous alcohol related contacts.

17.15 Abuse and Lose (§302.400)

This law provides that a court shall, upon a plea of guilty, conviction, or finding of guilt, enter an order revoking the driving privileges of any person determined to have committed one of the following offenses and who, at the time said offense was committed, was under the age of 21:

1. any alcohol related traffic offense; OR
2. any offense involving the possession or use of alcohol, committed while operating a motor vehicle; OR
3. any offense involving the possession or use of a controlled substance, in violation of the laws; OR
4. any offense involving the alteration, modification, or misrepresentation of an operator's or chauffeur's license in violation of §311.328; OR
5. any offense in violation of state law involving the possession or use of alcohol for a second time.

Section 577.505 provides that a court shall revoke the driving privileges for a person over 21 who is found in possession of controlled substances while operating a motor vehicle.

The penalty for a first offense under this law is a 90-day suspension of driving privileges. The penalty for subsequent offenses is a one-year revocation. (**As of July 1, 1992, county and municipal violations are included under the Abuse and Lose Law.**)

Persons under 21 who plead guilty or are found guilty of a law involving the possession or use of alcohol or drugs shall be ordered by the court to complete an alcohol or drug related education program.

Comments:

This law is intended to impose additional penalties on youth offenders found in the possession of alcohol or controlled substances. A person under this section can lose his/her driving privileges merely for being in possession of drugs while a passenger of a vehicle, if they are under 21.

17.16 Suspension for Theft of Motor Fuel (§302.286)

This statute, enacted in 2001, provides that a person who drives away from a gas pump without paying is subject to having his/her license suspended. The statute provides that no person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment or authorized charge for motor fuel dispensed has been made. A person convicted of stealing pursuant to §570.030, for the theft of motor fuel, shall have his/her driver's license suspended by the court, beginning on the date of the conviction. The period of such suspension is as follows:

1. 60-day suspension for the first offense provided that the person may, apply for a hardship license after the first 30 days of suspension;
2. 90-day suspension for the second offense provided that the person may, apply for a hardship license after the first 60 days of suspension;
3. 180-day suspension for the third or any subsequent offense provided that the person may, apply for a hardship license after the first 90 days of suspension.

The statute requires that a person whose license has been suspended under this section, shall submit his license to the court, who then forwards the license and order of suspension to the department of revenue. After expiration of the suspension period, the suspension is terminated and the person's license is returned upon payment of a \$25 reinstatement fee.

17.17 Motor Vehicle Financial Responsibility Law (§303.024)

This statute provides that a person driving a vehicle must produce, upon demand, an insurance identification card. The statute sets forth the information that is required to be on a valid insurance identification card.

Penalty:

The statute makes it an offense to fraudulently use an insurance identification card as follows:

1. Any person who knowingly or intentionally produces, manufactures, sells, or otherwise distributes a fraudulent document intended to serve as an insurance identification card is guilty of a class E felony.
2. Any person who knowingly or intentionally possesses a fraudulent document intended to serve as an insurance identification card is guilty of a class B misdemeanor.

17.18 Operating a Motor Vehicle with Canceled, Suspended, or Revoked License (§302.321)**Penalty Varies (See Below)****Elements:**

A person commits the offense under this section if (s)he:

1. operates a motor vehicle;
2. on a highway;
3. while his/her license or driving privilege has been canceled, suspended, or revoked; and
4. acts with criminal negligence with respect to knowledge of the fact that his/her privilege has been canceled, suspended, or revoked.

Penalty:

Driving while revoked or suspended is a misdemeanor. The penalty for a first offense is a class D misdemeanor. The penalty for subsequent offenses is a class A misdemeanor. Driving while revoked can be charged as a felony in the following circumstances:

1. When any person with no prior alcohol-related enforcement contacts;
 - a. Was convicted a fourth or subsequent time of driving while revoked or on a county or municipal ordinance of driving while suspended or revoked where the defendant was represented by or waived the right to an attorney in writing; and
 - b. Where the prior three driving while revoked offenses occurred within ten years of the date of the occurrence of the present offense; or
2. When any person with a prior alcohol-related enforcement contact;
 - a. Was convicted a third or subsequent time of driving while revoked or on a county or municipal ordinance of driving while suspended or revoked where the defendant was represented by or waived the right to an attorney in writing; and
 - b. Where the prior two driving while revoked offenses occurred within ten years of the date of the occurrence of the present offense; and
 - c. Where the person received and served a sentence of ten days or more on such previous offenses.

Definition:

Alcohol-related enforcement contact: any suspension or revocation under §§302.500-302.540, any suspension or revocation entered in this or any other state

for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration.

Comments:

This section has been revised to stiffen the punishment particularly for those who continue to operate a motor vehicle after their license has been revoked for a driving while intoxicated offense. Imprisonment is now mandatory with no eligibility for parole or probation until a minimum of 48 consecutive hours of imprisonment or at least ten days involving at least 40 hours of community service is completed. Driving while revoked is a class A misdemeanor; however, the penalty is enhanced to a class D felony for repeat offenders-those possessing prior alcohol related suspensions, and those convicted of driving while intoxicated. The criteria for determining whether an offender is eligible for a class D felony driving while revoked will often be difficult for the arresting officer to assess. In many instances, the prosecutor will need to run an in-depth criminal history to determine whether the felony can be filed.

17.19 Leaving the Scene of an Accident (§577.060)
Penalty Varies (See Below)**Elements:**

A person commits the offense of leaving the scene of an accident when:

1. being the operator of a vehicle or vessel involved in an accident resulting in injury or death or damage to property
2. knowing that an injury has been caused to a person or damage has been caused to property by his/her culpability or by accident
3. (s)he leaves the place of injury, damage, or accident
4. without stopping and giving his name, residence (including city and street number), registration or license number of vehicle or vessel and operator's license number, if any, to the other party, law enforcement officer, or nearest law enforcement agency.

Penalty:

Normally leaving the scene of an accident is a class A misdemeanor. However, it will become a class E felony if the accident results in:

1. physical injury to another party; OR
2. property damage in excess of \$1,000.00; OR
3. if the defendant has previously pled guilty to or been found guilty of a violation of this section.

It will become a class D felony if the accident results in a death.

Comments:

The Revised Criminal Code adds vessels to this offense meaning an operator of a vessel must follow the same reporting requirements and an operator of a vehicle when there is an accident.

This section makes it an offense to leave the scene of an accident on private property that is open to the public. This section also covers a one-car accident involving damage to property of another where for compliance, the driver must immediately locate and contact the property owner or the nearest police station.

All law enforcement officers have jurisdiction when invited by an injured person, to enter the premises of any privately owned parking lot or parking facility for the purpose of investigating an accident.

NOTE: As of 1986 legislation in relatively minor accidents where there is no physical injury or damage does not exceed \$1,000.00, leaving the scene has been reduced from a felony to a misdemeanor.

Examples:

1. Rhoda Wey attempts to parallel park her car at a parking facility for a convention center event. She strikes the car in front of her, cracking a tail lamp lens. Later Rhoda Wey leaves without notifying the owner of the damaged vehicle or a police officer of the incident. Rhoda Way is guilty of leaving the scene of a motor vehicle accident even though the damage done was very minor.
2. Rhoda Wey fails to yield when turning left at an intersection, causing an approaching vehicle to run off the road into a ditch to avoid striking Rhoda. Rhoda continues on without stopping to give her name or address, and other required information. Rhoda is guilty of leaving the scene of a motor vehicle accident, even though the vehicles did not collide, because through her actions, the other car was damaged in running off the road.

**17.20 Seat Belts Required (§307.178)
(Infraction Fine up to \$10.00)**

1. Each driver and front seat passenger shall be required to wear a properly adjusted and fastened safety belt, except that a child under four years of age shall be protected in an approved child restraint system.

2. No person shall be stopped, inspected, or detained solely to determine compliance with this provision.
3. Each person who violates the provisions of the seat belt law after July 1, 1987, shall be guilty of an infraction for which a fine not to exceed \$10.00 may be imposed. No court costs may be imposed on a person due to a violation of this section. No points may be assessed on any person's license for a violation of this section.

**17.21 Child Passenger Restraint Required (§307.179)
(Infraction, Fine up to \$50.00)**

Elements:

Every driver transporting a child under the age of sixteen years shall be responsible, when transporting such child in a motor vehicle operated by that driver on the streets or highways of this state, for providing the protection of such child as follows:

1. Children less than four years of age, regardless of weight, shall be secured in a child passenger restraint system appropriate for that child;
2. Children weighing less than forty pounds, regardless of age, shall be secured in a child passenger restraint system appropriate for that child;
3. Children at least four years of age but less than eight years of age, who also weigh at least forty pounds but less than eighty pounds, and who are less than four feet, nine inches tall, shall be secured in a child passenger restraint system or booster seat appropriate for that child;
4. Children at least eighty pounds or children more than four feet, nine inches in height shall be secured by vehicle safety belt or booster seat appropriate for that child.

Penalty:

Any driver who violates subdivisions (1), (2), or (3) above is guilty of an infraction and, upon conviction, may be punished by a fine of not more than fifty dollars and court costs.

Comments:

Any person, whether a parent or not, must provide for the protection of a child passenger under four years of age. The infant must be placed in a child passenger restraint system approved by the Department of Public Safety.

These provisions do not apply to public carriers for hire.

17.22 Emergency and Stationary Vehicles-Yielding Right-of-Way (§304.022)

1. Upon the immediate approach of an emergency vehicle giving audible signal by siren or while having at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle or a flashing blue light authorized by §307.175, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as far as possible to the right of the traveled portion of the highway and there upon stop and remain in such position until such emergency vehicle has passed, except when otherwise directed by a police or traffic officer.
2. Upon approaching a stationary vehicle displaying lighted red or red and blue lights, or a stationary vehicle displaying lighted amber or amber and white lights, the driver of every motor vehicle shall:
 - a) Proceed with caution and yield the right-of-way, if possible, with due regard to safety and traffic conditions, by making a lane change into a lane not adjacent to that of the stationary vehicle, if on a roadway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle; or
 - b) Proceed with due caution and reduce the speed of the vehicle, maintaining a safe speed for road conditions, if changing lanes would be unsafe or impossible.
3. The motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the emergency vehicle has passed, except as otherwise directed by a police or traffic officer.
4. An "emergency vehicle" is a vehicle of any of the following types:
 - a) A vehicle operated by the state highway patrol, the state water patrol, the Missouri capitol police, a conservation agent, or a state park ranger, those vehicles operated by enforcement personnel of the state highways and transportation commission, police or fire department, sheriff, constable or deputy sheriff, federal law enforcement officer authorized to carry firearms and to make arrests for violations of the laws of the United States, traffic officer, coroner, medical examiner or forensic investigator of the county medical examiner's office, or by a privately owned emergency vehicle company;
 - b) A vehicle operated as an ambulance or operated commercially for the purpose of transporting emergency medical supplies or organs;

- c) Any vehicle qualifying as an emergency vehicle pursuant to §307.175;
 - d) Any wrecker, or tow truck, or a vehicle owned and operated by a public utility or public service corporation while performing emergency service;
 - e) Any vehicle transporting equipment designed to extricate human beings from the wreckage of a motor vehicle;
 - f) Any vehicle designated to perform emergency functions for a civil defense or emergency management agency established pursuant to the provisions of Chapter 44;
 - g) Any vehicle operated by an authorized employee of the department of corrections who, as part of the employee's official duties, is responding to a riot, disturbance, hostage incident, escape or other critical situation where there is the threat of serious physical injury or death, responding to mutual aid call from another criminal justice agency, or in accompanying an ambulance which is transporting an offender to a medical facility;
 - h) **Any vehicle designated to perform hazardous substance emergency functions established pursuant to the provisions of §§260.500-260.550;**
 - i) Any vehicle owned by the state highways and transportation commission and operated by an authorized employee of the department of transportation that is marked as a department of transportation emergency response or motorist assistance vehicle;
 - j) Any vehicle owned and operated by the civil support team of the Missouri National Guard while in response to or during operations involving chemical, biological, or radioactive materials or in support of official requests from the state of Missouri involving unknown substances, hazardous materials, or as may be requested by the appropriate state agency acting on behalf of the governor.
5. The driver of any vehicle referred to in subsection 4 of this section shall not sound the siren thereon or have the front red lights or blue lights on except when such vehicle is responding to an emergency call or when in pursuit of an actual or suspected law violator or when responding to, but not upon returning from, a fire;
- a) The driver of an emergency vehicle may:
 - i) park or stand irrespective of the provisions of §§304.014-304.025;

- ii) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - iii) exceed the prima facie speed limit so long as the driver does not endanger life or property;
 - iv) disregard regulations governing direction of movement or turning in specified directions;
- b) The exemptions herein granted to an emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds audible signal by bell, siren, or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying a red light or blue light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.
6. No person shall purchase an emergency light as described in this section without furnishing the seller of such light an affidavit stating that the light will be used exclusively for emergency vehicle purposes.
7. Violation of this section shall be deemed a class A misdemeanor.

17.23 Leaving the Scene of a Shooting (§577.068)
Penalty Varies (See Below)

Elements:

A person commits the offense of leaving the scene of a shooting when such person:

1. being in possession of a firearm or projectile weapon (defined under §571.010)
2. discharges such firearm or projectile weapon; AND
3. causes injury or death to another person; AND
4. knowing that (s)he has caused injury or death to another person
5. leaves the place of the shooting
6. without giving his/her name, address, and driver's license number, if applicable, to
 - a. a law enforcement officer; OR
 - b. the nearest police station or law enforcement officer.

Penalty:

Leaving the Scene of a Shooting is a Class A Misdemeanor, unless previously convicted under this section, then it is a Class E Felony.

Comments:

This section prohibits an individual who has discharged a gun resulting in physical injury or death from leaving the scene of such shooting without providing identifying information to a law enforcement officer. The statute permits a person who has been injured to leave the scene of the shooting to obtain medical assistance, so long as the person returns to the scene of the shooting or otherwise provides the required identifying information to a law enforcement officer within a reasonable time after the shooting. The statute confers authority on conservation agents to enforce this provision as to hunting-related shootings.

Chapter 18

Offenses Upon the Water

18.1 Introduction (§306.010)

This chapter deals with various offenses involving the operation of vessels upon the lakes and rivers of Missouri. Several important definitions for Chapter 306 are:

Intoxicated condition-to be under the influence of alcohol, a controlled substance or drug, or any combination thereof.

Operate-to navigate or otherwise use a motorboat or a vessel.

Vessel-every motorboat and every description of motorized watercraft, and any watercraft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, used or capable of being used as a means of transportation on water, but not any watercraft having as the only means of propulsion a paddle or oars.

NOTE: The offenses of boating while intoxicated and operating with excessive BAC are in Chapter 577. Boating on a particular waterway is not an element of these offenses.

18.2 Note Concerning Chemical Tests of a Person's Blood, Breath, or Saliva

All chemical tests shall be performed according to methods and devices approved by the Department of Health. A licensed physician, registered nurse, phlebotomist, or trained medical technician, acting at the request and direction of a law enforcement officer, shall withdraw blood for the purpose of determining blood alcohol content, unless the medical personnel, in the exercise of good faith medical judgment, believes such procedure would endanger the life or health of the person in custody. Blood may be withdrawn only by such medical personnel but this restriction does not apply to the taking of a breath test, or a saliva specimen. Only a previously unused and sterile needle and sterile vessel may be used to withdraw blood. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venipuncture. Any person operating a vessel will be deemed to have given consent to a chemical test or tests (no more than two for any one incident) of his/her blood, breath, or saliva if arrested for any offense for which the arresting

officer had reasonable grounds to believe that the person had committed any of the offenses in this section pertaining to the influence of drugs and alcohol.

18.3 Prohibited Alcoholic Drinking Devices, Containers, and Coolers on Rivers (§306.109)**Class A Misdemeanor**

1. No person shall possess or use beer bongs or other drinking devices used to consume similar amounts of alcohol on the rivers of this state.
2. No person shall possess or use any large volume alcohol containers that hold more than four gallons of an alcoholic beverage on the rivers of this state.

Note: A “beer bong” includes any device that is intended and designed for the rapid consumption or intake of an alcoholic beverage, including but not limited to funnels, tubes, hoses, and modified containers with additional vents. The provisions of this section shall not apply to persons on the Mississippi River, Missouri River, or Osage River.

18.4 Unlawful Use of Water Skis and Surfboards (§577.024)**Class B misdemeanor**

A person commits this offense if such person:

1. Manipulates any water skis or surfboard in a reckless or negligent manner so as to endanger the life or property of any person; or
2. Manipulates any water skis or surfboard while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

18.5 Negligent Operation of a Vessel (§577.025)**Penalty Varies (See Below)****Elements:**

A person commits the offense of negligent operation of a vessel if that person:

1. when operating a vessel
2. acts with criminal negligence as defined in subsection 5 of §562.016
 - a) to cause physical injury to any other person; OR
 - b) damage to the property of any other person.

Note: The vessel does not have to be operated on the Mississippi River, Missouri River, or the Lakes of Missouri.

Penalty:

Negligent operation of a vessel is a class B misdemeanor upon conviction for a first violation, a class A misdemeanor upon conviction for the second violation, and a class E felony for conviction for the third and subsequent violations.

18.6 Boating While Intoxicated Causing Death (§577.013)
Class C Felony

Elements:

A person commits the offense of boating while intoxicated (§577.013.2(5)(c)) if (s)he:

1. while in an intoxicated condition (with an intoxicated condition defined as being under the influence of alcohol, a controlled substance or drug, or any combination thereof)
2. operates any vessel; AND
3. when so operating, acts with criminal negligence; AND
4. causes the death of any person

Note: The vessel does not have to be operated on the Mississippi River, Missouri River, or the Lakes of Missouri.

Penalty:

Boating while intoxicated causing death is a class C felony.

18.7 Boating While Intoxicated Causing Injury (§577.013)
Class E Felony

Elements:

A person commits the offense of boating while intoxicated causing injury if (s)he:

1. while in an intoxicated condition (with an intoxicated condition defined as being under the influence of alcohol, a controlled substance or drug, or any combination thereof)
2. operates any vessel; AND
3. when so operating, acts with criminal negligence; AND
4. causes physical injury to any other person.

Note: The vessel does not have to be operated on the Mississippi River, Missouri River, or the Lakes of Missouri.

Penalty:

Boating while intoxicated causing injury is a class E felony.

18.8 Boating with Excessive BAC (§577.014)
Penalty Varies (See Below)**Elements:**

A person commits the offense of boating with excessive blood alcohol content if (s)he:

1. operates a vessel
2. while having eight-hundredths of one percent or more by weight of alcohol in his/her blood

Penalty:

Boating with excessive BAC is a class B misdemeanor for the first offense. The penalty increases for previous boating offenses:

1. class A misdemeanor for a prior boating offender;
2. class E felony for a persistent boating offender;
3. class D felony for an aggravated boating offender;
4. class C felony for a chronic boating offender;
5. class B felony for a habitual boating offender.

18.9 Motorboat Operator, Minimum Age, Exceptions (§306.122)
Class B misdemeanor (§306.210)

1. No person under fourteen years of age shall operate any motorboat upon the waters of this state unless such person is under the direct on-board supervision of a parent, guardian, or other person sixteen years of age or older, or unless the motorboat is moored.
2. No person shall authorize or knowingly permit a motorboat owned by such person or under the person's control to be operated on the waters of this state in violation of this section, nor shall a parent or guardian authorize or knowingly permit such a child, under fourteen years of age, to operate a motorboat in violation of this section.

18.10 Operation of Watercraft, how-Restricted Areas, Certain Vessels, Speed Allowed-Exceptions. (§306.125)

Elements:

1. Every person shall operate a motorboat, vessel, or watercraft in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.
2. No person shall operate a motorboat, vessel or watercraft at any time from a half-hour after sunset until an hour before sunrise the following day at a speed exceeding thirty miles per hour.
3. Vessels shall not be operated within one hundred feet of any dock, pier, occupied anchored boat, or buoyed restricted area on any lake at a speed in excess of slow-no wake speed.
4. Subsection 1 of this section shall not apply to a motorboat or other boat race authorized under §306.130.

18.11 Accident or Collision, Duties of Operator-Report Required, When. (§306.140)

Elements:

1. It shall be the duty of the operator of a watercraft involved in a collision, accident, or other casualty, so far as (s)he can do so without serious danger to his/her own watercraft, crew and passengers, to render to other persons affected by the collision, accident, or other casualty, assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his/her name, address, and identification of his/her watercraft in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.
2. In the case of collision, accident, or other casualty involving a watercraft, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of two hundred dollars, shall file with the Missouri State Water Patrol a full description of the collision, accident, or other casualty, including such information as the patrol may, by regulation, require.

**18.12 Powers of Peace Officer when Working in Cooperation
with other Law Enforcement Agency, Exception.-(§306.167)**

Elements:

The uniformed members of the water patrol division, with the exception of radio personnel, shall have full power and authority as now or hereafter vested by law in peace officers when working with and at the special request of the sheriff of any county, the chief park ranger of any first class county not having a charter form of government and containing a portion of a city with a population exceeding four hundred thousand inhabitants, the chief of police of any city, or the superintendent of the state highway patrol; provided, however, that such power and authority shall be exercised only upon the prior notification of the chief law enforcement officer of each jurisdiction.

Chapter 19

Miscellaneous Offenses

19.1 Littering (§577.070)

Class C Misdemeanor

A person commits the offense of littering if (s)he:

1. places, or causes to be or placed or deposited
2. any glass, glass bottles, wire, nails, tacks, hedge, cans, garbage, trash, refuse, or rubbish of any kind, nature or description
3. on the right of way of any public road or State highway or on or in any of the waters in this state or on the banks of any stream, or on any land or water owned, operated or leased by the State, any board, department, agency or commission thereof or on any land or water owned, operated or leased by the federal government or on any private real property owned by another without the owner's consent.

Penalty:

The offense of littering is a class C misdemeanor unless such littering creates a substantial risk of physical injury or property damage to another; or the person has been found guilty of a violation of this section or an offense committed in another jurisdiction which, if committed in this state, would be a violation under this section, in which case it is a class A misdemeanor.

19.2 Abandoning Motor Vehicle (§577.080)

Class A Misdemeanor

A person commits the offense of abandoning a vehicle, vessel, or trailer if (s)he:

1. knowingly abandons any vehicle, vessel, or trailer
2. on the right-of-way of any public road or state highway or on or in any of the waters in this State or on the banks of any stream, or on any land or water owned, operated or leased by the State, any board, department, agency or commission thereof, or any political subdivision thereof or on any land or water owned, operated or leased by the federal government or on any private real property owned by another without his/her consent.

19.3 Keeping a Dangerous Dog (§578.024)
Penalty Varies (See Below)

Elements:

A person commits the offense of keeping a dangerous dog if:

1. (s)he owns or possesses a dog, and
2. that dog bites another person without provocation, and
3. that dog has previously bitten a person or a domestic animal without provocation.

Penalty:

The penalty is a class B misdemeanor unless the attack results in serious injury to any person in which case it is a class A misdemeanor. This penalty is a class E felony if the attack results in serious injury to any person and the previous attack resulted in serious injury to any person. The penalty is a class D felony if the attack results in the death of any person.

Note: Law enforcement dogs are exempt under §578.022 when they bite in the course of their official duties.

19.4 Abandonment of Airtight or Semi-Airtight Containers (§577.100)
Class B Misdemeanor

A person commits the offense of abandonment of an airtight or semi-airtight container if:

1. (s)he knowingly abandons, discards, or permits to remain on premises under his/her control
2. in a place accessible to children
3. any abandoned or discarded icebox, refrigerator, or other airtight or semi-airtight container which has a capacity of one and one-half cubic feet or more and an opening of 50 square inches or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid
4. without rendering such equipment harmless to human life by removing such hinges, latches, or other hardware which may cause a person to be confined therein.

This section does not apply to an icebox, refrigerator, or other airtight or semi-airtight container located in the part of a building, which is occupied by a dealer, warehouseman, or repairman. However, the defendant has the burden of injecting this issue in this defense.

19.5 Use of Life Jacket Shall Not Be Prohibited (§577.161)

Class C Misdemeanor

Elements:

1. A person knowingly disallows
2. the use of a life jacket in a swimming pool
3. by any individual who suffers a physical disability or condition which necessitates the use of such a life jacket.

19.6 Bus Hijacking (§577.703 (1))

Penalty Varies (See Below)

Elements:

A person commits the offense of **bus hijacking** (§577.703(1)) if (s)he:

1. seizes or exercises control of
2. any bus within the State
3. by force, violence, or threat of force or violence.

Penalty:

Bus hijacking is a class B felony.

19.6A Assault with Intent to Commit Bus Hijacking (§577.703

(2))

Penalty Varies (See Below)

Elements:

A person commits the offense of **assault with the intent to commit bus hijacking** (§577.703(2)) if (s)he:

1. intimidates, threatens, assaults, or batters
2. any driver, attendant, or guard of a bus
3. so as to interfere with the performance of duties by such person.

Penalty:

Assault with the intent to commit bus hijacking is a class D felony unless a dangerous or deadly weapon is used or other means capable of inflicting serious bodily injury, then a class A felony (§577.703(3)).

**19.6B Possession & Concealment of a Dangerous or Deadly Weapon Upon a Bus (§577.703 (4))
Class D Felony**

A person commits the offense of “possession and concealment of a dangerous and deadly weapon by a passenger upon a bus” (§577.703(4)) if (s)he:

1. boards a bus
2. with a dangerous or deadly weapon or other means capable of inflicting serious bodily injury
3. concealed upon his/her person or his/her effects.

NOTE: This section is not applicable to law enforcement officers, security personnel or others carrying weapons with the consent of the owner of the bus.

**19.7 Bombing and Other Explosive Matter Upon Bus or Near Bus Terminal (§577.706)
Penalty Varies (See Below)****Elements:**

A person commits the offense of planting a bomb or explosive in or near a bus or terminal if (s)he:

1. bombs, plants, or places any bomb or other explosive matter or thing
2. in, upon, or near any terminal or bus,
3. wherein a person or persons are located or being transported, OR
4. where there is being stored, shipped, or prepared for shipment, any goods, wares, merchandise or anything of value. (§577.706(1)).

Penalty:

This is a class A felony. Any person who threatens to commit this offense is guilty of a class D felony (§577.706(2)). Any person who discharges any firearm or hurls any missile at, or into and/or upon any bus, terminal, or other transportation facility is a class B felony (§578.310(3)).

**19.8 Offensive Language, Alcohol or Drug Usage, and Disobedience Upon Bus or Near Bus Terminal (§577.709)
Class C misdemeanor**

Elements:

A person commits this offense if, while on a bus, in the terminal, or on terminal property, that person:

1. uses any obscene, profane, or vulgar language or otherwise threatens a breach of the peace;
2. drinks any intoxicating liquor, be under the influence of alcohol, or under the influence or have in his/her possession any non-prescription controlled substance upon any non-chartered passenger bus;
3. fails to obey a reasonable request or order of a bus driver or any duly authorized company representative

19.9 Disorderly Conduct and Carrying Deadly Weapons Upon Bus or Near Bus Terminal (§577.712)

Penalty Varies (See Below)

A person commits the offense of disorderly conduct in a bus terminal if:

1. an authorized bus company representative asks any person in a bus terminal or on the premises of a bus terminal to identify himself/ herself and/or state his/her business reasons for being there; AND
2. such person refuses to identify himself/herself and/or fails to state an acceptable business purpose. Violation of this section is a class C misdemeanor. Note that it is within the authority of a bus transportation company to refuse admission to terminal grounds to any person not having a bona fide business purpose.

Penalty:

It is an offense for any person to carry a deadly or dangerous weapon or any explosives or hazardous material into a bus terminal or aboard a bus (§577.712(2)). Violation of this section is a class D felony. Upon discovery, such weapons, explosives, or hazardous material should be seized.

19.10 Removal of Private Luggage Upon Bus or Stored in a Bus Terminal (§577.718)

Class D Felony

It is an offense for any person to remove any baggage, cargo, or any other item transported upon a bus or stored in a terminal without the consent of the owner of the property or the bus company. Violation of this section is a class E felony without regard to the actual value of any property so removed.

Comments:

These sections should be examined carefully for they have common application and should be of great utility to the law enforcement officer, especially in urban areas. **Note** that these sections are not applicable to buses used exclusively to transport children to and from school.

Example:

Tyrone, a passenger on Whippet Bus Lines, is drinking from a flask of whiskey towards the back of the bus. An off-duty officer working as security for the bus lines asks Tyrone to put the bottle back in his coat. Tyrone becomes irate at this request and starts cursing at the officer. The officer informs Tyrone that he will have to get off of the bus at the next stop whereupon Tyrone shoves the officer and indicates that he will not get off the bus. Tyrone is guilty of drinking intoxicating liquor on the bus (Part ¶19.8(2)); using vulgar and profane language on the bus (Part ¶19.8(1)); refusing to obey a reasonable request by a bus company representative (Part ¶19.8(3)); and may be guilty of assault in the fourth degree, or assault with intent to commit bus hijacking (Part ¶19.6(2)). **Note** that Tyrone has committed three separate misdemeanors and possibly one felony.

Related Offenses:

Assault	¶5.7
Kidnapping	¶5.24
Armed criminal	¶10.4
Dangerous and concealed weapons	¶10.3
Peace disturbance	¶11.2
Possession or use of controlled substances	¶7.9
Burning or exploding	¶8.10
Causing a catastrophe	¶8.12

19.11 Animal Welfare**Introduction**

Laws have been passed to make it a criminal offense not to adequately care for animals in a person's charge, and to prevent injury to people or animals.

Animal neglect covers careless inattention to animals in that they are not adequately cared for or controlled. Animal abuse applies to the intentional killing, injuring, mistreatment, or abandonment of an animal.

A parent or guardian is held responsible for the adequate care of animals kept by a minor child.

A neglected or abused animal found off of its owner's property may be immediately seized and impounded. Note that the mere fact that the animal is loose may be sufficient for neglect. The animal should then be placed in the care and custody of a veterinarian or animal shelter. The owner should be notified, if ascertainable.

If there is probable cause to believe a neglected or abused animal is on a person's property, a warrant may be obtained from the court to authorize entry onto the private property to inspect, care for, or impound any neglected or abused animal.

The owner of any animal found neglected or abused is liable for the costs of care and maintenance of impounded animals.

Exempted from these provisions are licensed veterinarians; scientific experiments; authorized hunting, fishing or trapping licensees; zoological parks; professional rodeos; accepted animal husbandry practices; the killing of an animal injuring a person; and the killing of house or garden pests.

Definitions:

Animal-for purposes of this section, animal is "every living vertebrate except a human being."

Adequate care-normal and prudent attention to the needs of an animal, including wholesome food, clean water, shelter, and health care as necessary to maintain good health.

Adequate control-to reasonably restrain or govern an animal so that the animal does not injure itself, any person, or any other animal or property.

19.12 Animal Neglect and Abandonment (§578.009)

Penalty Varies (See Below)

Elements:

A person commits the offense of animal neglect when (s)he:

1. has custody or ownership of an animal; AND
2. fails to provide adequate care. OR
3. has knowingly abandoned an animal
4. in any place
5. without making provisions for its adequate care.

Penalty:

Animal neglect and abandonment is a class C misdemeanor unless the person has previously been found guilty of an offense under this section, or an offense in another jurisdiction which would constitute an offense under this section, in which it is a class B misdemeanor. All fines and penalties for a first conviction of animal neglect or abandonment may be waived by the court provided that the person found guilty of animal neglect or abandonment shows that adequate, permanent remedies for the neglect have been made. Reasonable costs incurred for the care and maintenance of neglected or abandoned animals may not be waived.

19.13 Animal Abuse (§578.012)
Penalty Varies (See Below)

Elements:

A person commits the offense of animal abuse when (s)he:

1. intentionally or purposely kills an animal in any manner not allowed by law; OR
2. purposely or intentionally causes injury or suffering to an animal; OR
3. has ownership or custody of an animal and knowingly fails to provide adequate care which results in substantial harm to the animal.

Penalty:

Animal abuse is a class A misdemeanor, unless the defendant has previously plead guilty to or has been found guilty of animal abuse, or the suffering involved in subdivision (2) is the result of torture and mutilation consciously inflicted while the animal was alive, in which case it is a class E felony.

19.14 Knowingly Releasing an Animal (§578.029)
Penalty Varies (See Below)

Elements:

A person commits the offense of knowingly releasing an animal if that person:

1. acting without the consent of the owner or custodian of an animal
2. intentionally releases any animal
3. that is lawfully confined
 - a. for the purpose of companionship or protection of person or property; OR
 - b. for recreation, exhibition or educational purposes.

Penalty:

Knowingly releasing an animal is a Class B Misdemeanor unless it's a second or subsequent offense, then it's a class E Felony.

Comments:

For purposes of this provision, "animal" is defined as every living creature (domesticated or wild), but excluding humans. This provision does not apply to a public servant acting in the course of their official duties.

19.15 Dog Fighting (§§578.025-578.026)
Penalty Varies (See Below)

Elements:

A person commits the offense of dogfighting if (s)he:

1. Owns, possesses, keeps, or trains any dog, with the intent that such dog shall be engaged in an exhibition of fighting with another dog;
2. For amusement or gain, causes any dog to fight with another dog, OR
3. causes any dogs to injure each other; OR
4. Permits any act as described in subdivision (1) or (2) of this subsection to be done on any premises under his or her charge or control, or aids or abets any such act.

Penalty:

Dog fighting is a Class E Felony for the principal parties and a Class A Misdemeanor for the spectators.

Comments:

A person who commits the above offense is guilty of a class E felony. A mere spectator of a dogfight exhibition is guilty of a class A misdemeanor under this section. This law is not designed to prohibit the use of dogs in the management of livestock, the use of dogs in hunting, or the ordinary training of dogs for any lawful purpose.

Law enforcement officers having probable cause of the exhibition of fighting dogs may enter any building and therein shall lawfully seize all dogs, paraphernalia, implements, and other property used in the violation of this act. The court shall be notified of all property so seized. Upon conviction under this section, all property seized shall be forfeited and disposed of as the court may order.

19.16 Bullbaiting or Cockfighting (§578.050)
Class A Misdemeanor**Elements:**

A person commits this offense if (s)he:

1. keeps, uses, manages, owns, or receives money for the admission of any person
2. to any place kept or used for the purpose of fighting or baiting any bull, bear, cock, or other creature other than dogs; OR
3. Encourages, aids, assists, or is present at any place kept or used for such purpose; OR
4. Permits or suffers any place belonging to him or her, or under his or her control, to be so kept or used.

Comments:

Common applications are cock, bull, and bear fights. This section does not apply to dog fighting, which is covered under §§578.025-578.026.

19.17 Keeping a Dangerous Wild Animal (§578.023)
Class C Misdemeanor**Elements:**

A defendant is guilty of keeping a dangerous wild animal if (s)he:

1. Keeps
2. any lion, tiger, leopard, ocelot, jaguar, cheetah, margay, mountain lion, Canadian lynx, bobcat, jaguarondi, hyena, wolf, bear, nonhuman primate, coyote, or deadly, dangerous, or poisonous reptiles, or any deadly or dangerous reptile over eight feet long
3. unless such person registers such animals with the local law enforcement agency in the county in which the animal is kept.

Comments:

Specifically exempted from registration requirements are zoological parks, circuses, scientific or educational institutions, research laboratories, veterinary hospitals, and animal refuges.

Local municipal and county ordinances should be checked for further restrictions or possibly an absolute prohibition of possession of undomesticated wildlife. (See introduction for law enforcement officer's duties and authority.)

19.18 Interference with Lawful Hunting and Trapping-First Degree (§578.151)
Class A Misdemeanor

Elements:

A person commits the offense of interference with lawful hunting or trapping in the first degree if (s)he:

1. intentionally interferes
2. with the lawful taking of wildlife
3. by another; OR
4. intentionally harasses, drives, or disturbs
5. any game animal
6. with the purpose of disrupting lawful hunting or trapping.

NOTE: A peace officer who reasonably believes that a person has committed the offense of interference with lawful hunting or trapping may order that person to desist. Failure to obey the order of a peace officer to desist from such conduct is a class A misdemeanor.

19.19 Interference with Lawful Hunting and Trapping-Second Degree (§578.152)
Class B Misdemeanor

Elements:

A person commits the offense of interference with lawful hunting or trapping in the second degree if (s)he:

1. enters or remains in a hunting or trapping area
2. where hunting or trapping may occur
3. with the intent to interfere with the lawful taking of wildlife.

NOTE: A peace officer who reasonably believes that a person has committed the offense of interference with lawful hunting or trapping may order that person to desist. Failure to obey the order of a peace officer to desist from such conduct is a class B misdemeanor.

19.20 Retrieving Wildlife From Private Land (§578.520)
Penalty Varies (See Below)

Elements:

A person commits the offense of retrieving wildlife from private land if (s)he:

1. fishes, hunts, traps, or retrieves;
2. wildlife;
3. from any private land not owned or possessed by that person;
4. without the permission of the owner or lessee of such land.

Penalty:

Any person who violates this section is guilty of a class B misdemeanor. Any violator may also be required by the court to surrender his or her license or permit issued by the Department of Conservation to hunt, fish or trap. All privileges to hunt, fish or trap may be revoked for a period of one year.

**19.21 Flushing or Shooting Wildlife from Private Land
(§578.525)**
Penalty Varies (See Below)

A person commits the offense of flushing or shooting wildlife from private land if (s)he:

1. intentionally drives or flushes;
2. any large or small game;
3. located on private land not owned or possessed by that person;
4. without the permission of the owner or lessee of such land;
5. toward other hunters of that person's same hunting group; OR
6. intentionally discharges a firearm;
7. at large or small game;
8. that originates from private land not owned or possessed by that person;
9. without the permission of the owner or lessee of such land.

Penalty:

Any person who violates this section is guilty of a class B misdemeanor.

Note: It is an affirmative defense to violations of both sections that the premises were at the time open to members of the public and that the defendant complied with all lawful conditions imposed concerning access to or the privilege of remaining on the premises.

19.22 Flag Desecration (§578.095)**Class A Misdemeanor****Elements:**

A person commits the offense of flag desecration if:

1. (s)he purposely
2. and publicly
3. mutilates, defaces, defiles, tramples upon, or otherwise desecrates
4. the national flag of the United States or the state flag of the State of Missouri.

Comments:

In 2014, the United States Court of Appeals, Eighth Circuit agreed that this section is overbroad and is facially unconstitutional under the First Amendment. *Snider v. City of Cape Girardeau*, 752 F.3d 1149 (8th Cir.)

19.23 Hazing Prohibited (§578.365)**Penalty Varies (See Below)****Elements:**

A person commits the offense of hazing if (s)he:

1. knowingly
2. participates in or causes hazing.

Penalty:

Hazing is a Class A Misdemeanor. If the act creates a substantial risk to the life of the prospective member, then it is a Class D Felony.

Comments:

Hazing is defined as a willful act, occurring on or off the campus of an educational institution, directed against a student or a prospective member of an organization operating under the sanction of an educational institution, that recklessly endangers the mental or physical health or safety of a student or prospective member for the purpose of initiation or admission into or continued membership in any such organization to the extent that such person is knowingly placed at substantial risk of the loss of life or substantial bodily or psychological harm.

19.24 Unlawful Receipt of Food Stamps or EBT Cards**(§570.400)****Penalty Varies (See Below)****Elements:**

A person commits the offense of unlawfully receiving food stamp coupons or EBT cards if (s)he:

1. knowingly
2. receives or uses the proceeds of food stamp coupons or EBT cards
3. to which (s)he is not lawfully entitled and for which (s)he has not applied and been approved to receive.

Penalty:

The offense is a class E felony unless the face value of the public assistance benefits or EBT cards is less than \$750.00, in which case it is a class A misdemeanor. If the person is found guilty of a second offense in an amount less than \$750.00 it is a class E felony. If a person is found guilty of a second or subsequent felony offense, or a person is found guilty of an offense under this section and has previously been found guilty of two or more violations under §§570.400-570.410 it is a class D felony. Any person who is found guilty of felony unlawful transfer of public assistance benefits or EBT cards shall serve not less than one hundred twenty days in the department of corrections unless such person pays full restitution to the state of Missouri within thirty days of the date of execution of sentence.

In addition to any criminal penalty, any person found guilty of unlawful transfer of public assistance benefits or EBT cards shall pay full restitution to the state of Missouri for the total amount of moneys converted. No person placed on probation for the offense shall be released from probation until full restitution has been paid.

19.25 Unlawful Conversion of Food Stamps or EBT Cards**(§570.402)****Penalty Varies (See Below)****Elements:**

A person commits the offense of conversion of food stamp coupons or EBT cards if (s)he:

1. knowingly
2. engages in any transaction to convert food stamp coupons or EBT cards

3. to other property contrary to state and federal law.

Penalty:

The offense is a class E felony unless the face value of the public assistance benefits or EBT cards is less than \$750.00, in which case it is a class A misdemeanor. If the person is found guilty of a second offense in an amount less than \$750.00 it is a class E felony. If a person is found guilty of a second or subsequent felony offense, or a person is found guilty of an offense under this section and has previously been found guilty of two or more violations under §§570.400-570.410 it is a class D felony. Any person who is found guilty of felony unlawful transfer of public assistance benefits or EBT cards shall serve not less than one hundred twenty days in the department of corrections unless such person pays full restitution to the state of Missouri within thirty days of the date of execution of sentence.

In addition to any criminal penalty, any person found guilty of unlawful transfer of public assistance benefits or EBT cards shall pay full restitution to the state of Missouri for the total amount of moneys converted. No person placed on probation for the offense shall be released from probation until full restitution has been paid.

19.26 Unlawful Transfer of Public Assistance Benefits or EBT Cards (§570.404)

Penalty Varies (See Below)

Elements:

A person commits the offense of unlawful transfer of food stamp coupons or EBT cards if (s)he:

1. knowingly
2. transfers public assistance benefits or EBT cards
3. to another
4. not lawfully entitled to or approved to receive same.

Penalty:

The offense is a class E felony unless the face value of the public assistance benefits or EBT cards is less than \$750.00, in which case it is a class A misdemeanor. If the person is found guilty of a second offense in an amount less than \$750.00 it is a class E felony. If a person is found guilty of a second or subsequent felony offense, or a person is found guilty of an offense under this

section and has previously been found guilty of two or more violations under §§570.400-570.410 it is a class D felony. Any person who is found guilty of felony unlawful transfer of public assistance benefits or EBT cards shall serve not less than one hundred twenty days in the department of corrections unless such person pays full restitution to the state of Missouri within thirty days of the date of execution of sentence.

In addition to any criminal penalty, any person found guilty of unlawful transfer of public assistance benefits or EBT cards shall pay full restitution to the state of Missouri for the total amount of moneys converted. No person placed on probation for the offense shall be released from probation until full restitution has been paid.

19.27 Unlawful Use of a Pesticide (§281.101)
Penalty Varies (See Below)

Elements:

1. It shall be unlawful to recommend for use, to use, or to supervise the use of any pesticide in a manner inconsistent with its labeling required by federal or state law.
2. It shall be unlawful for any individual to misuse any pesticide.
3. It shall be unlawful to make any false or misleading statements during the course of an investigation into the sale, distribution, use, or misuse of any pesticide.
4. It shall be unlawful to make any false or misleading statements on any application, form, or documents submitted pursuant to state licensing requirements.
5. It shall be unlawful to make a false, misleading, or fraudulent statement or claim, through any media, which misrepresents the effects or use of any pesticide.
6. It shall be unlawful to make unauthorized claims about government approval of a pesticide.
7. It shall be unlawful to aid or abet any licensed or unlicensed individual in evading the provision of the Missouri Pesticide Use Law.

Note:

Changes were made to §281.101 during the 2021 legislative session (SB26); but these changes are not effective until January 1, 2024 and have therefore been intentionally omitted.

Penalty:

Persons convicted of violating the provision of the "Missouri Pesticide Use Law" shall be guilty of a misdemeanor, punishable by imposition of a fine of not

less than \$100.00 and not more than \$5,000.00, or by imprisonment in the county jail for not less than 30 days and not more than one year, or by both imposition of a fine and imprisonment.

19.28 Unlawful Transportation of Hazardous Waste (§260.425)
Penalty Varies (See Below)

Elements:

A defendant engages in the unlawful transportation of hazardous waste when (s)he:

1. Knowingly
 2. transports any hazardous waste to a facility not authorized to receive such waste; treats, stores, or disposes of waste improperly; makes false statements in any application or official document; or falsifies, tampers with, or renders inaccurate any monitoring device maintained to detect waste,

Penalty:

Upon conviction, violators shall be punished by a fine of not less than \$2,500.00 nor more than \$25,000.00 for each day of violation, or by confinement in the county jail for not more than one year, or by both such fine and confinement. Enhanced punishment is provided for successive convictions.

**19.29 Denial or Interference with Handicapped Persons
(&§209.160)**

Elements:

Any person or persons, firm or corporation, or agent thereof:

1. who denies or interferes with admittance to or enjoyment of public facilities, such as streets, highways, sidewalks, walkways, public buildings, etc.
 2. of a totally or partially blind or deaf person, or a physically disabled person
 3. shall be guilty of a class B misdemeanor.

Related Offense:

Rights of the handicapped §209.150

19.30 Agroterrorism (§574.130)

Penalty Varies (See Below)

Elements:

A person commits the offense of agroterrorism if that person:

1. purposely
2. spreads any type of contagious, communicable, or infectious disease
3. Among crops, poultry, livestock or other animals.

Penalty:

Agroterrorism is a Class E Felony unless damage to livestock or animals is ten million dollars or more then it is a Class B Felony.

Comments:

The spreading of disease to livestock or animals that is consistent with medically recognized therapeutic procedures is a defense to this offense.

19.31 All-Terrain Vehicles (§300.348 and §304.013)

Class C Misdemeanor

The General Assembly has enacted comprehensive legislation dealing with all-terrain vehicles.

1. Essentially, the use of all-terrain vehicles is prohibited upon streets and highways except:
 - a. for official governmental use;
 - b. agricultural use; OR
 - c. by special permit.
2. Any person operating an all-terrain vehicle:
 - a. in a careless way so as to endanger persons or property; OR
 - b. while under the influence of drugs or alcohol
 - c. commits a class C misdemeanor.

19.32 Crop Protection Act (§569.132)

Penalty Varies (See Below)

Elements:

No person shall:

3. Intentionally cause the loss of any crop; OR

4. Damage, vandalize, or steal any property in or on a crop; OR
5. Obtain access to a crop by false pretenses for the purpose of performing acts not authorized by the landowner: OR
6. Enter or otherwise interfere with a crop with the intent to destroy, alter, duplicate or obtain unauthorized possession of such crop; OR
7. Knowingly obtain, by theft or deception, control over a crop for the purpose of depriving the rightful owner of such crop, or for the purpose of destroying such crop; OR
8. Enter or remain on land on which a crop is located with the intent to commit an act prohibited by this section.

Penalty:

Violation of the Crop Protection Act is a class A misdemeanor, unless the loss or damage to the crop exceeds \$750 in value. A violation resulting in loss or damage that exceeds \$750 but, does not exceed \$1,000, is a Class E Felony. A violation resulting in loss or damage that excess \$1,000, but does not exceed \$25,000, is a Class D Felony. A violation resulting in loss or damage that exceeds \$25,000, but does not exceed \$75,000 is a class C felony. A violation resulting in loss or damage that exceeds \$75,000 is a class B felony.

19.33 Unlawful Protest (Spc. Edward Lee Myers law) (§574.160)
Penalty Varies (See Below)

A person commits the offense of unlawful funeral protest if (s)he:

1. engages in picketing or other protest activities;
2. within 300 feet of any residence, cemetery, funeral home, church, synagogue, or other establishment;
3. within one hour prior to or one hour after the conducting of any funeral or burial service at that place.

Penalty:

Violation of this section is a class B misdemeanor, unless committed by a person who has previously been found guilty of this section in which case the violation is a class A misdemeanor.

Note: Each day on which a violation occurs in a separate offense.

19.34 Stolen Valor Act (§570.350)**Elements:**

It is unlawful for any person to knowingly misrepresent himself or herself as a veteran or a medal recipient.

Penalty:

Violation of this section is a class A misdemeanor for a first offense. All subsequent violations of this statute are class E felonies. If certain decorations or medals are involved, then the punishment is a class D or E felony.

19.35 Purchasing or Selling Body Parts (§194.275)**Penalty Varies (See Below)****Elements:**

No person shall:

1. for valuable consideration,
2. knowingly purchase or sell a body part for any purpose,
3. if removal of the whole body or a part is intended to occur after the individual's death.

Note: The term **valuable consideration** does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of any part or a whole body.

Penalty:

Any person who violates this section is guilty of a felony and subject to a fine not to exceed \$50,000 or imprisonment not to exceed seven years, or both.

Chapter 20 **Criminal Street Gang Activity**

20.1 Introduction

This chapter covers offenses relating to criminal street gang activity. Sections 578.419-578.437 is known and cited as the “Missouri Criminal Street Gangs Prevention Act.”

20.2 Criminal Street Gangs (§578.421)

A criminal street gang is defined to be any ongoing organization, association, or group of three or more people, whether formal or informal, having as one of its motivating activities the commission of one or more of the following acts:

1. assault with a deadly weapon or by means of force likely to cause serious physical injury as provided in §565.050 and §565.052;
2. robbery, arson, and those offenses under Chapter 569, which are related to robbery and arson;
3. murder or manslaughter, as provided in §565.020 and §565.024;
4. any violation of the provisions of Chapter 579, which involves the distribution, delivery, or manufacture of a substance prohibited by Chapter 579;
5. unlawful use of a weapon which is a felony pursuant to §571.030;
6. tampering with witnesses and victims, as provided in §575.270;
7. promoting online sexual solicitation, as provided in §566.103;
8. sexual trafficking of a child in the first or second degree, as provided in §566.210 or §566.211, respectively;
9. patronizing prostitution, as provided in subsection 4 of §567.030;
10. promoting prostitution in the first or second degree, as provided in §567.050 or §567.060;
11. abuse or neglect of a child, as provided in subsection 6 of §568.060;
12. sexual exploitation of a minor, as provided in §573.023;
13. child used in sexual performance, as provided in §573.200;
14. promoting sexual performance by a child, as provided in §573.205; -OR-
15. any dangerous felony, as defined in §556.061.

20.3 Pattern of Criminal Street Gang Activity (§578.421)

A pattern of criminal street gang activity is defined as the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after August 28, 1993, and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons.

20.4 Participating in a Criminal Street Gang (§578.423)

Penalty:

Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal street gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by gang members, shall be guilty of a class B felony.

20.5 The Commission of Crimes for the Benefit of a Criminal Street Gang (§578.425)

Penalty:

People who commit a felony for the benefit of, at the direction of, or in association with, any criminal street gang with the purpose to promote, further, or assist in any criminal conduct by gang members shall receive the following punishments.

1. Felony-any person who commits a felony for the benefit of a criminal street gang shall, upon conviction for that felony, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of two years.
 - a. If committed within one thousand feet of a public or private elementary, vocational, junior high, or high school (as defined in the statute concerning the distribution of a controlled substance within one thousand feet of a school), the additional term shall be three years.
 - b. If a person who violates this section in the commission of a dangerous felony shall, upon conviction of that dangerous felony, in addition and consecutive to the punishment prescribed for the dangerous felony of which (s)he has been convicted, be punished by an additional term of five years.
 - c. If the felony committed for the benefit of a criminal street gang is punishable by death or imprisonment for life, the person shall not be paroled until a minimum of fifteen calendar years have been served.

NOTE: All of the criminal provisions associated with criminal street gang activity shall not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

20.6 Public Nuisances

I. Buildings and Structures (§578.430)

Any room, building, structure, or inhabitable structure as defined in §556.061, which is used by a criminal street gang in a pattern of criminal street gang activity shall be deemed a public nuisance. No person may keep or maintain such a public nuisance.

The attorney general, circuit attorney, or prosecuting attorney may, in addition to any criminal prosecutions, prosecute a suit in equity to enjoin the public nuisance. If the court finds that the owner of the room, building, structure, or inhabitable structure knew that the premises were being used for criminal street gang activity, the court may order that the premises shall not be occupied or used for a period as the court may determine, not to exceed one year. Any persons, including owners, lessees, officers, agents, offenders, or employees, aiding or facilitating such a nuisance may be made defendants in any suit to enjoin the nuisance.

As it is unlawful to keep or maintain a public nuisance, in addition to any other criminal prosecutions, the prosecuting attorney, attorney general, or circuit attorney may, by information or indictment charge the owner or occupant of the public nuisance with the class D felony of keeping or maintaining a public nuisance.

II. Weapons (§578.435 & 578.437)

Weapons, including any firearm, concealable firearm, blackjack, explosive weapon, gas gun, knife, knuckles, machine gun, projectile weapon, rifle, short barrel shotgun, or switchblade knife as defined in §571.010. owned or possessed by a member of a criminal street gang for the purposes of the commission of any of the offenses that are considered to constitute criminal street gang activity may be confiscated by any law enforcement agency or peace officer as defined in §590.100. If the law enforcement agency or peace officer believes that the weapon has been or will be used in criminal street gang activity or that the return of the weapon would be likely to result in endangering the safety of others, the law enforcement agency or peace officer may initiate a petition in circuit court to determine if the weapon should be returned or declared a nuisance. If the court finds the weapon to be a nuisance, it shall be destroyed.

Before any weapon may be declared a nuisance, the law enforcement agency must inform the lawful owner at the lawful owner's last known address by registered mail thirty days prior to a court hearing. If the weapon's lawful owner requests a hearing, the court shall set a hearing no more than sixty days from the receipt of such a request. At such a hearing, the burden of proof shall be upon the state to show **by a preponderance of the evidence** that the seized item has been or will be used in criminal street gang activity or that the return of the weapon would likely result in endangering the lives of others.

Chapter 21

Civil Process

21.1RSMo. Chapter 491

1. §491.100-the summons form.
 - a. The form shall:
 - i. Be in the form of a subpoena;
 - ii. State the name of the court issuing;
 - iii. State the title of the action occurring;
 - iv. State the names of the attorneys for all parties in the action; and
 - v. State or identify the attorney or the party who is requesting the witnesses' attendance.
 - b. The form shall:
 - i. Command each person to whom it is directed to attend and give testimony; or
 - ii. Advise the person as to the name and telephone number of a person who can direct the person (witness) when and where to appear.
 - c. The subpoena is issued by the court clerk where the matter is pending or by the notary public of the county where the trial or action will be held.
2. §491.110-subpoenas, by whom served.
 - a. A subpoena may be served by the sheriff, coroner, marshal, constable, or law enforcement officer in the county in which the person to be served resides or may be found.
 - b. A subpoena may be served by any "disinterested" person who would be a "competent witness" in the cause. (note-a private citizen can legally serve subpoenas as long as (s)he would meet the criteria of that of a competent witness.)
3. §491.120-subpoenas, how served and returned.
 - a. Legal service shall be by reading the original or by delivering a copy of the original to the person being summoned.
 - b. In all cases where the person refuses to hear or to receive the subpoena, the "offer" to read the original or the attempt to deliver a copy shall be deemed sufficient service.

- c. In all service, the return of service shall show the manner of the service, and in civil cases where the witness being summoned resides more than forty miles from the trial place, the return shall state this fact and whether the person's legal fees were tendered or paid at the time of service.
 - d. In all return of service if the subpoena was served by an officer, the return itself shall be conclusive of the facts stated therein; when served by a private citizen, the return shall be verified by an affidavit.
4. §491.150-attendance, how enforced.
 - a. A person who has been legally served any civil process, and who then fails to attend as required by the process, may be compelled by a "writ of attachment" against his/her person to appear in the future (491.340).
 - b. The writ of attachment may be served in any county of the State by the sheriff of the county.
 5. §491.180-penalty when the party refuses to attend and/or testify.
 - a. If a person, having been legally summoned, refuses to attend and/or to testify, either in court or before a person authorized to take depositions, the person may be punished by:
 - i. Being found in contempt of court; and/or
 - ii. A finding for the adverse party by default.
 - b. Both actions above could incur.
 6. §491.200-penalty for refusing to testify after attending.
 - a. A person who, upon being summoned and attending, then refuses to give evidence under oath or affirmation may,
 - b. Be committed to prison, without bail, until (s)he gives such evidence.
 7. §491.205-Witnesses-Self-Incrimination-Immunity §491.205 and §540.160
 - (1) In the case of any individual who has been or may be called to testify or provide other information at any proceeding ancillary to or before a circuit or associate circuit court or grand jury of the state of Missouri, the judge of the circuit in which the proceeding is or may be held may issue, in accordance with subsection 2 of this section, upon the written request of the prosecuting attorney, may issue an order requiring such individual to give testimony or provide other information which the individual refuses to give or provide on the basis of the individual's privilege against self-incrimination. When such an order is issued, the witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but after complying with the order and giving the testimony or

producing the evidence compelled by the order, no such person shall be criminally prosecuted or subjected to any criminal penalty for or on account of any act, transaction, matter or thing which is the subject matter of the inquiry in which the person testifies or produces evidence, except a prosecution for perjury, giving a false or misleading statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order.

- (2) A prosecuting attorney may be granted an order compelling a witness to testify and produce evidence upon the approval of a verified application for witness immunity heard by a judge of the circuit court. The judge hearing the application for witness immunity may not preside over a grand jury proceeding where such testimony is given, and may not hear the subsequent criminal trial or any ancillary proceeding for which the immunity applies. Such application shall offer proof that:
 - a. Such individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination; and either:
 - b. The testimony or other information to be provided by such individual is necessary to the investigation or prosecution and is otherwise unobtainable; or
 - c. The testimony or other information to be provided by such individual is necessary for the prosecutor to prove a defendant's guilt beyond a reasonable doubt.
 - (3) If a person refuses to testify on the basis of such person's privilege against self-incrimination after being given an order to testify under this section or produce evidence or other information, such person shall be adjudged in contempt and committed to the county jail until such time as the person purges himself or herself of this contempt by testifying or producing evidence and information as ordered, or the trial for which the person's testimony was requested has concluded. In no event shall the length of confinement exceed twelve months.
8. §491.340-attachment to be executed as in criminal cases, cost.
 - a. Writs of attachment may be directed to any sheriff or law enforcement officer of the county, to be served on the witness in the county in which the witness resides.
 - b. A writ of attachment shall be executed in the same manner as a warrant in a criminal case would be executed.
 - c. The fees for a writ of attachment shall be paid by the person attached, unless (s)he shows reasonable cause to the satisfaction of the judge.
 9. §491.400-definition.

- a. Civil summons: a subpoena, order, or other notice that requires the appearance of a witness.
- b. For general purposes they shall all be considered civil process

21.2RSMo. Chapter 506

1. §506.010-Chapter 506 of the Missouri Revised Statutes shall be known as the “Civil Code of Missouri” and it shall govern the procedures for all suits and proceedings of any civil nature.
2. §506.040-there shall only be one form of action regulated by this statute and it shall be “civil action.”
3. §506.060-periods of time prescribed or allowed by code, how computed.
 - a. A written motion, other than one which is heard “ex parte,” shall require that notice of the hearing may not be served to the party of notice later than five days before the hearing.
 - b. Motions to the court which are supported by affidavits, must be served together; affidavits filed by the opposing party(ies) may be served not later than one day before the hearing.
4. §506.100-how papers shall be served.
 - a. All papers of record shall be served upon each of the parties affected in the process.
 - b. When a party is represented by an attorney, the service shall be made upon the attorney, unless the court specifically orders the person named to be served directly.
 - c. All papers of the record shall be filed with the court either before service or within five days after service.
5. §506.120-the clerk of the court having jurisdiction issues the required summons or civil process and ensures the delivery of it to the sheriff or to a person appointed by the court to serve it.
6. §506.150-summons and petition, how served-service by mail authorized, when.
 - a. Summons and petition may be served together to an individual by delivering it directly to him/her, or by leaving a copy of the original at the dwelling house with some other person who is a family member over the age of fifteen years, or to an agent who is authorized or is required to receive service of civil process.
 - b. Summons and petition in which a corporation, partnership, or association is named can be delivered to an officer, partner, or a managing/general agent; or by leaving copies at the office with the person-in-charge there; and in some cases, by mailing a copy directly to the defendant(s) named.
 - c. In all cases where the defendant(s) shall refuse to hear the reading of the original or to receive a copy, then the offer to deliver the writ shall be deemed a legal service.

- d. Service by mail shall be by using registered or certified mail with a return receipt requested and the delivery of the service restricted to only the addressee.
- e. When the mail delivery as described above is refused, the person serving process shall then mail, by first class, a copy of the complaint and summons along with the notice that despite the refusal to receive the notice, the case will proceed and judgement by default will likely be rendered unless (s)he appears in court to defend the suit.
- 7. §506.170-where civil process may be served.
 - a. All civil process may be served anywhere in the state.
 - b. The clerk of the county of jurisdiction shall forward it to the sheriff of any county for service.
- 8. §506.180-proof of service.
 - a. Every law enforcement officer to whom any writ of civil process is given to be served, shall make a return of service in writing which includes:
 - i. The time, place, and manner of service; and
 - ii. The officer's name.
 - b. A private citizen serving civil process must make a written affidavit as to the time, place, and manner of service.

21.3RSMo. Chapter 513

- 1. §513.025-general execution, form.
 - a. The court of jurisdiction may grant executions.
 - b. The execution is directed against the goods, chattels, and real estate of the party against whom the judgment, order, or decree is rendered.
- 2. §513.040-the execution may be directed to any sheriff in the state, and it may be levied, served, and returned by any sheriff in the state.

21.4RSMo. Chapter 532

- 1. §532.010-every person in custody, except those who can neither be discharged nor bailed, may prosecute a "writ of habeas corpus".
- 2. 532.140-a writ of habeas corpus may be served on an officer named in the writ, or by being left at the jail or place of confinement with any person having charge of the prisoner.

21.5RSMo. Chapter 533

- 1. §533.010-a writ of "replevin" may be used as the means to recover specific personal property which has been wrongfully detained and which is likely to be lost if not re-obtained in a timely fashion.

21.6RSMo. Chapter 535

1. §535.030-the service of summons in landlord-tenant actions must be made at least four days before the court date in the summons.
 - a. In addition to personal delivery of service, the court can also order a copy of the summons to be securely affixed in a conspicuous place on the dwelling, at least ten days before the return date, and by also mailing a copy to the defendant's last known address.
 - b. Even when no response occurs, the court can proceed to hear the landlord-tenant action case.

21.7RSMo. §540.106

1. Any grand jury proceeding that includes testimony or other information from a witness who is granted immunity from prosecution shall be a recorded proceeding. In the event a person is indicted as a result of such immunized testimony, the prosecutor shall provide a transcription of such testimony to all defendants.

21.8RSMo. Chapter 544

1. §544.650-writ of scire facias, how served.
 - a. Whenever any bail bond or recognizance bond has been issued by a court which requires a person to appear before it, and it is broken, then it shall be lawful and sufficient to serve a writ of scire facias or other writ or civil process requiring the person to appear.
 - b. This writ can be delivered by presenting a certified copy to the person named, or by leaving a certified copy at the usual place of abode with a member of the family who is over the age of fifteen years.

21.9RSMo. Chapter 575

1. §575.160-interference with legal process.
 - a. A person who, knowing that another person is authorized by law to serve civil process, does something to prevent the civil service commits the offense of interference.
 - b. Civil process includes any writ, summons, subpoena, warrant (other than a criminal arrest warrant), or any other process or order of any court.
 - c. Interference with legal process is a class B misdemeanor.

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The following definitions are arranged alphabetically. The designation, "Code definition," means that the definition of that term may be used in conjunction with any section of the Code. The designation "as used in Chapter ____," means that the definition is peculiar to the particular chapter of the Criminal Code and may not necessarily mean the same throughout the Code. The letter H and the number following it refer to the chapter in this handbook where the definition is used.

Access-to approach, instruct, communicate with, store data, retrieve data from, or otherwise make use of any resources of, a computer system, or computer network.

Adult-means a person eighteen years of age or older (Code Definition Effective January 1, 2021);

Adulterated-means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulations of this state lawfully filed, or if none, as set by commercial usage (as used in Chapter 570; H9).

Advance gambling activity-a person "**advances gambling activity**" if, acting other than as a player, (s)he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, lottery, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefore, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement or communication of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his/her knowledge for purpose of gambling activity, (s)he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation (as used in Chapter 572; H15).

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Affidavit-means any written statement which is authorized or required by law to be made under oath, and which is sworn to before a person authorized to administer oaths (as used in Chapter 575; H12).

Affirmative defense-When the phrase "**affirmative defense**" is used in the Code, it means:

1. the defense referred to is not submitted to the trier of fact unless supported by evidence; AND
2. if the defense is submitted to the trier of fact the defendant has the burden of persuasion that the defense is more probably true than not (Code definition).

All-terrain vehicle-means any motorized vehicle manufactured and used exclusively for off-highway use which is 50 inches or less in width, with an unladen dry weight of 600 pounds or less, traveling on three, four, or more low-pressure tires, with a seat designed to be straddled by the operator, and handlebars for steering control (as used in Chapter 301).

Appropriate-means to take, obtain, use, transfer, conceal or retain possession of (as used in Chapter 570; H9).

Billy Club – also called a Billy; means a police officer's club or baton or a heavy wooden stick used as a weapon.

Bookmaking-means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events (as used in Chapter 572; H15).

Burden of injecting the issue-When the phrase "**the defendant shall have the burden of injecting the issue**," is used in the Code, it means:

1. the issue referred to is not submitted to the trier of fact unless supported by evidence; AND
2. if the issue is submitted to the trier of fact any reasonable doubt on the issue requires a finding for the defendant on that issue (Code definition).

Child-means any person under eighteen years of age (Code Definition Effective January 1, 2021);

Coercion-means a threat, however communicated;

1. to commit any offense; OR
2. to inflict physical injury in the future on the person threatened or another; OR
3. to accuse any person of any offense; OR
4. to expose any person to hatred, contempt or ridicule; OR
5. to harm the credit or business repute of any person; OR
6. to take or withhold action as a public servant, or to cause a public servant to take or withhold action; OR
7. to inflict any other harm which would not benefit the actor.

A threat of accusation, lawsuit, or other invocation of official action is not coercion if the property sought to be obtained by virtue of such threat was honestly claimed as restitution or indemnification for harm done in the

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circumstances to which the accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful service. The defendant shall have the burden of injecting the issue of justification as to any threat (as used in Chapter 570; H9).

Computer-an internally programmed, automatic device that performs data processing.

Computer equipment-computers, terminals, data storage devices, and all other computer hardware associated with a computer system or network.

Computer network-a set of related, remotely connected devices and communications facilities including more than one computer system with capability to transmit data among them through communication facilities.

Computer program-an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process.

Computer software-a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

Computer system-a set of related, connected or unconnected, computer equipment, devices, or computer software.

Computer system services-providing a computer system or computer network to perform useful work.

Conditional release-means the conditional discharge of a prisoner by the Department of Corrections subject to conditions of release that the state board of probation and parole deems reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the state board of probation and parole. The conditions of release shall include avoidance by the offender of any other offense, federal or state, and shall prohibit technical violation of his probation and parole (as used in Chapter 558).

Confinement-a person is in confinement when (s)he is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

1. a court orders his/her release; OR
2. (s)he is released on bail, bond, or recognizance, personal or otherwise; OR
3. a public servant having the legal power and duty to confine him/her authorizes his/her release without guard and without condition that (s)he return to confinement;
4. a person is not in confinement if:
 - a. (s)he is on probation or parole, temporary or otherwise; OR
 - b. (s)he is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or not being held under guard by a person having the legal power and duty to transport him/her to or from a place of confinement (Code definition).

Consent-consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

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1. it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor; OR
2. it is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; OR
3. it is induced by force, duress, or deception (Code definition).

Contest of chance-means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor herein (as used in Chapter 572; H15).

Controlled substance-means any drug, substance, or immediate precursor in Schedules 1 through 5 listed in 195.017.

Counterfeit substance-means a controlled substance which by the container, label, trademark, or for other reasons resembles the product of another manufacturer, distributor, or dispenser.

Credit device-means a writing, number or other device purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (as used in Chapter 570; H9).

Crime-see Offense.

Criminal negligence-a person "acts with criminal negligence" or is criminally negligent when (s)he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation (Code definition).

Custody-a person is in custody when (s)he has been arrested but has not been delivered to a place of confinement (Code definition).

Dangerous felony-means the felonies of murder, forcible rape, forcible sodomy, assault, burglary, robbery, kidnapping, or the attempt to commit any of these felonies (Code definition).

Dangerous instrument-means any instrument, article, or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury (Code definition).

Dangerous offender-is one who:

1. is being sentenced for a felony during the commission of which (s)he knowingly murdered or endangered or threatened the life of another person or knowingly inflicted or attempted or threatened to inflict serious physical injury on another person; AND
2. has been previously convicted of a class A or B felony or a dangerous felony (Code definition).

Deadly force-means physical force which the actor used with purpose of causing or which (s)he knows to create a substantial risk of causing death or serious physical injury (as used in Chapter 563; H3).

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Deadly weapon-means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury may be discharged, or a switchblade knife, dagger, billy club, black jack, or metal knuckles (Code definition).

Dealer-means a person in the business of buying and selling goods (as used in Chapter 570; H9).

Deceit-means purposely making a representation which is false and which the actor does not believe to be true and upon which the victim relies, as to a matter of fact, law, value, intention, or other state of mind. The term "deceit" does not, however, include falsity as to matters having no pecuniary significance, or puffing statements unlikely to deceive ordinary persons in the group addressed. Deception as to the actor's intention to perform a promise shall not be inferred from the fact alone that (s)he did not subsequently perform the promise (as used in Chapter 570).

Deprive-means:

1. to withhold property from the owner permanently; OR
2. to restore property only upon payment of reward or other compensation; OR
3. to use or dispose of property in a manner that makes recovery of the property by the owner unlikely (as used in Chapter 570; H9).

Deviate sexual intercourse-means any sexual act involving the genitals of one person and the mouth, tongue, hand, or anus of another person (as used in Chapter 566; H6).

Disability-a mental, physical, or developmental impairment that substantially limits one or more major life activities or the ability to provide adequately for one's care or protection, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings. (Code definition).

Displays publicly-means exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others (as used in Chapter 573; H16).

Drug paraphernalia-constitutes any materials, products, or equipment which is used, intended to be used, or designed for use in connection with the manufacture, distribution, or use of any controlled substance or imitation controlled substance. Examples include: isomerization devices, testing equipment, scales and balances, adulterants, mixing devices, containers, capsules and balloons, water pipes, roach clips. The fact that an item has a legitimate use does not prevent the object from being drug paraphernalia if the illicit intended use is established.

Dwelling – means any building or inhabitable structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging (or conveyance of any kind, whether the building,

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inhabitable structure, or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night).

Elderly person-a person sixty years of age or older. (Code definition).

Eligible Adult-a person sixty years of age or older or a handicapped person between the ages of eighteen and fifty-nine who is unable to protect his/her own interests or adequately perform or obtain services which are necessary to meet his/her essential human needs.

Enter unlawfully or remain unlawfully-a person "enters unlawfully or remains unlawfully" in or upon premises when (s)he is not licensed or privileged to do so. A person who, regardless of his/her purpose, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless (s)he defies a lawful order not to enter or remain, personally communicated to him/her by the owner of such premises or by other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public (as used in Chapter 569; H8).

Explicit sexual material-means any pictorial or three-dimensional material depicting masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation, or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals, provided, however, that works of art of anthropological significance shall not be deemed to be within the foregoing definition (as used in Chapter 573; H16).

Explosive weapon-any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury, or substantial property damage; or any device designed or adapted for delivery or shooting such a weapon.

"Family" or "household member"-for purposes of Chapter 455 (Adult Abuse), includes spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time.

Felony-an offense is a "felony" if it is so designated or if persons convicted thereof may be sentenced to death or imprisonment for a term which is in excess of one year (Code definition).

Financial instrument-any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

Forcible compulsion-means either:

1. physical force that overcomes reasonable resistance; OR

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2. a threat, express or implied, that places a person in reasonable fear of death, serious physical injury, or kidnapping of himself or another person (Code definition).

Forcible felony – any felony involving the use or threat of physical force or violence against any individual, including but not limited to murder, robbery, burglary, arson, kidnapping, assault, and any forcible sexual offense.

Forcibly steals-a person "**forcibly steals**," and thereby commits robbery, when, in the course of stealing, as defined in §570.030, (s)he uses or threatens the immediate use of physical force upon another person for the purpose of:

1. preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; OR
2. compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft (as used in Chapter 569; H8).

Furnish-means to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit, or otherwise provide (as used in Chapter 573; H16).

Gambling-stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his/her control or influence, upon an agreement or understanding that (s)he will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance; nor does gambling include playing an amusement device that confers only an immediate right of replay not exchangeable for something of value (as used in Chapter 572; H15).

Gambling device-means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person with a machine. However, lottery tickets, policy slips, and other items used in the playing phases of lottery and policy schemes are not gambling devices with this definition (as used in Chapter 572; H15).

Gambling record-means any article, instrument, record, receipt, ticket, certificate, token, slip, or notation used or intended to be used in connection with unlawful gambling activity (as used in Chapter 572; H15).

Government-means any branch or agency of the government of this State or any political subdivision thereof (as used in Chapter 575; H12).

Incapacitated-means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of his/her conduct, or unable to communicate unwillingness to an act. A person is not "**incapacitated**" with respect to an act committed upon him/her if (s)he

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becomes unconscious, unable to appraise the nature of his/her conduct, or unable to communicate unwillingness to act, after consenting to the act (Code definition).

Infractions -

1. A violation defined by this Code or by any other statute of this state constitutes an "**infraction**" if it is so designated or if no other sentence than a fine, or fine and forfeiture, or other civil penalty is authorized upon conviction.
2. An infraction does not constitute an offense and conviction of an infraction shall not give rise to any disability or legal disadvantage based on conviction of an offense (Code definition).

Inhabitable structure-includes a ship, trailer, sleeping car, airplane, or other vehicle or structure:

1. where any person lives or carries on business or other calling; OR
2. where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; OR
3. which is used for overnight accommodation of a person. Any such vehicle or structure is "**inhabitable**" regardless of whether a person is actually present (Code definition).

Imitation controlled substance-is a substance that is in fact not a controlled substance but by appearance or representations made, a reasonable person would believe that the substance is a controlled substance.

Intellectual property-data including programs.

Judicial proceeding-means any official proceeding in court, or any proceeding authorized by or held under the supervision of a court (as used in Chapter 575; H12).

Juror-means a grand or petit juror, including a person who has been drawn or summoned to attend as a prospective juror (as used in Chapter 575; H12).

Jury-means a grand or petit jury, including any panel which has been drawn or summoned to attend as prospective jurors (as used in Chapter 575; H12).

Knowingly-a person "**acts knowingly**," or with knowledge:

1. with the respect to his/her conduct or to attendant circumstances when (s)he is aware of the nature of his/her conduct or that those circumstances exist; OR
2. with respect to a result of his/her conduct when (s)he is aware that his/her conduct is practically certain to cause that result (Code definition).

Law enforcement officer-means any public servant having both the power and duty to make arrests for violations of the laws of this state (Code definition).

Lottery or policy-means an unlawful gambling scheme in which for a consideration the participants are given an opportunity to win something of value, the award of which is determined by chance (as used in Chapter 572; H15).

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Material-means anything printed or written, or any picture, drawing, photograph, motion picture film, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates, and other latent representational objects (as used in Chapter 573; H16).

Minor-means any person under the age of 18 (as used in Chapter 573; H16). **Misdemeanor**-an offense is a "misdemeanor" if it is so designated or if a person convicted thereof may be sentenced to imprisonment for a term of which the maximum is one year or less (Code definition).

Mislabeled-means varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulations of this State lawfully filed, or if none, as set by commercial usage; or represented as being another person's product, though otherwise accurately labeled as to quality or quantity (as used in Chapter 570; H9).

Nudity-means the showing of post-pubertal human genitals or pubic area, with less than a fully opaque covering (as used in Chapter 573; H16).

Obscene/Obscenity-means any material or performance is "obscene" if, considered as a whole, applying contemporary community standards:

1. its predominant appeal is to prurient interest in sex; AND
2. it depicts or describes sexual conduct in a patently offensive way; AND
3. it lacks serious literary, artistic, political, or scientific value.

Of another-property is that "of another" if any natural person, corporation, partnership, association, governmental subdivision, or instrumentality, other than the actor, has a possessory or proprietary interest therein; if a building or structure is divided into separately occupied units, any unit not occupied by the actor is an "inhabitable structure of another" (as used in Chapter 569; H8).

Of another-property or services is that "of another" if any natural person, corporation, partnership, association, governmental subdivision, or instrumentality, other than the actor, has a possessory or proprietary interest therein, except that property shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement (as used in Chapter 570; H9).

Offense-means any felony or misdemeanor (Code definition).

Official proceeding-means any cause, matter, or proceeding where the laws of this State require that evidence considered therein be under oath or affirmation (as used in Chapter 575; H12).

Park is defined as any land, site or object primarily of recreational value or of cultural value because of its scenic, historic, archeological, scientific, or other distinctive characteristics or natural features.

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Patronizing prostitution-a person "patronizes prostitution" if:

1. pursuant to a prior understanding, (s)he gives something of value to another person as compensation for that person or a third person having engaged in sexual conduct with him/her or with another; OR
2. (s)he gives or agrees to give something of value to another person on an understanding that in return therefore that person or a third person will engage in sexual conduct with him/her or with another; OR
3. (s)he solicits or requests another person to engage in sexual conduct with him/her or with another, or to secure a third person to engage in sexual conduct with him/her or with another, in return for something of value (as used in Chapter 567; H13).

Performance-means any play, motion picture film, dance, or exhibition performed before an audience (as used in Chapter 573; H16).

Persistent offender-is one who has been previously convicted of two felonies committed at different times and not related to the instant offense as a single criminal episode (Code definition).

Persistent sexual offender-is one who has been previously convicted of the felony of rape, forcible rape, sodomy, forcible sodomy, or attempt to commit any of the aforesaid (Code definition).

Physical injury-means physical pain, illness, or any impairment of a physical condition (Code definition).

Place of confinement-means any building or facility and the grounds thereof wherein a court is legally authorized to order that person charged with or convicted of an offense be held (Code definition).

Player-means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit there from other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with other participants therein and who does not otherwise render material assistance to the establishment, conduct, or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises, and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in subdivision (2) of this section is not a "player" (as used in Chapter 572; H15).

Pornographic-any material or performance is "pornographic" if, considered as a whole, applying contemporary community standards:

1. its predominant appeal is to prurient interest in sex; AND
2. it depicts or describes sexual conduct in a patently offensive way; AND
3. it lacks serious literary, artistic, political, or scientific value.

In determining whether any material or performance is pornographic, it shall be judged with reference to its impact upon ordinary adults (as used in Chapter 573; H16).

Definitions

Pornographic for minors-any material or performance is "pornographic for minors" if it is primarily devoted to description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and:

1. its predominant appeal to prurient interest in sex; AND
2. it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; AND
3. it lacks serious literary, artistic, political, or scientific value for minors (as used in Chapter 573; H16).

Premises-includes any building, inhabitable structure, and any real property (as used in Chapter 563; H3).

Private person-means any person other than a law enforcement officer (as used in Chapter 563; H3).

Private property-means any place which at the time is not open to the public. It includes property which is owned publicly or privately; if a building or structure is divided into separately occupied units, such units are separate premises (as used in Chapter 574; H11).

Professional player-means a player who engages in gambling for a livelihood or who has derived at least 20 percent of his/her income in any one year within the past five years from acting solely as a player (as used in Chapter 572; H15).

Profit from gambling activity-a person "profits from gambling activity" if, other than a player, (s)he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby (s)he participates or is to participate in the proceeds of gambling activity (as used in Chapter 572; H15).

Promote-means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same (as used in Chapter 573; H16).

Promoting prostitution-a person "promotes prostitution" if, acting other than as a prostitute or a patron of a prostitute, (s)he knowingly:

1. causes or aids a person to commit or engage in prostitution; OR
2. procures or solicits patrons for prostitution; OR
3. provides persons or premises for prostitution purposes; OR
4. operates or assists in the operation of a house of prostitution or a prostitution enterprise; OR
5. accepts or receives or agrees to accept or receive something of value pursuant to an agreement or understanding with any person whereby (s)he participates or is to participate in proceeds of prostitution activity; OR
6. engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution (as used in Chapter 567; H13).

Property-means anything of value, whether real or personal, tangible or intangible, in possession or in action; (Code Definition).

Property-anything of value, as defined in subdivision (19) §570.010, whether real or personal, tangible or intangible, in possession or in action, and shall

Definitions

include but not be limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument (as used in Chapter 570; H9);

Property of another-means any property in which the actor does not have a possessory interest (as used in Chapter 574; H11).

Purposely-a person acts purposely with respect to his/her conduct when it is his/her conscious object (desire) to engage in that conduct or cause that result.

Public servant-any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses (Code Definition);

Recklessly-a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or a result will follow and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Reconnoiter – to examine or survey (a region, area, etc.); to make a reconnaissance

Remain after unlawfully entering – to remain in or upon premises after unlawfully entering.

Residence – a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

Sexual conduct (as used in Chapters 566 and 567)-includes any act that would constitute

“sexual intercourse”,

2. “deviate sexual intercourse”, or

3. “sexual contact” (see separate definitions)..

Sexual conduct (as used in Chapter 573)-means acts of human masturbation; deviate sexual intercourse, sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification (as used in Chapter 573; H16).

Sexual contact (as used in Chapter 566)-means any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing, or causing semen, seminal fluid, or other ejaculate to come into contact with another person, for the purpose of arousing or gratifying sexual desire of any person(§566.010(6)).

Sexual contact (as used in Chapter 567)-means any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing for the purpose of arousing or gratifying sexual desire of any person (§567.010(5)).**Sexual excitement**-means the condition of human male or female genitals when in a state of sexual stimulation or arousal (as used in Chapter 573; H16).

Definitions

Sexual intercourse-means any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results (as used in Chapter 566; H6).**Slot machine**-means a gambling device that as a result of the insertion of a coin or other object, operates either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance (as used in Chapter 572; H15).

Solvent-a substance that will dissolve another substance and is usually of a volatile nature.

Something of value-means any money or property, or any token, object or article exchangeable for money or property (as used in Chapter 567; H13).

Something of value-means any money or property, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge (as used in Chapter 572; H15).

Stalking-A person commits the offense of stalking if that person purposefully and repeatedly harasses or follows with the intent of harassing another person.

To tamper-to interfere with something improperly, to meddle with it, displace it, make unwarranted alterations in its existing condition, or to deprive temporarily, the owner or possessor of that thing (as used in Chapter 569; H8).

Testimony-means any oral statement under oath or affirmation (as used in Chapter 575; H12).

Toluol-the colorless petroleum-based toluene. Common commercial uses are for high octane gasoline, dyes, pesticides, glues, and as an industrial solvent.

Unlawful-means not specifically authorized by law (as used in Chapter 572; H15).

Unlawfully enter – a person unlawfully enters upon premises when (s)he enters such premises and is not licensed or privileged to do so. A person who, regardless of his or her purpose, enters in or upon premises that are at the time open to the public does so with license unless (s)he defies a lawful order not to enter, personally communicated to him or her by the owner of such premises or by another authorized person. A license to enter in a building that is only partly open to the public is not a license to enter in that part of the building that is not open to the public.

Utility-an enterprise which provides gas, electric, steam, water, sewerage disposal, or communication services and any common carrier. It may be either publicly or privately owned or operated (as used in Chapter 569; H8).

Definitions

Vessel – every motorboat and every description of motorized watercraft, and any watercraft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, used or capable of being used as a means of transportation on water, but not any watercraft having as the only means of propulsion a paddle or oars; (Code definition 556.061)

Vital public facility-includes a facility maintained for use as a bridge, whether over land or water, dam, reservoir, tunnel, communication installation, or power station (as used in Chapter 569; H8).

Voluntary act -

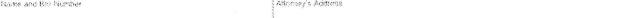
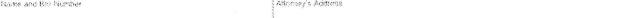
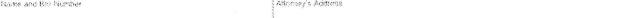
1. A person is not guilty of an offense unless his/her liability is based on conduct which includes a voluntary act.
2. A "**voluntary act**" is:
 - a. a bodily movement performed while conscious as a result of effort or determination; OR
 - b. an omission to perform an act of which the actor is physically capable.
3. Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his/her control for a sufficient time to have enabled him/her to dispose of it or terminate his/her control.
4. A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by law (Code definition).

Vulnerable person-any person in the custody, care, or control of the department of mental health who is receiving services from an operated, funded, licensed, or certified program. (Code definition).

Wholesale promote-means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for the purposes of resale (as used in Chapter 573; H16).

Writing-includes printing, any other method of recording information, money, coins, negotiable instruments, tokens, stamps, seals, credit cards, badges, trademarks and any other symbols of value, right, privilege or identification (as used in Chapter 570; H9).

APPENDICES

 Form 2385	Missouri Department of Revenue Notice of Suspension or Revocation of Your Driving Privilege																										
Suspension or Revocation starts 15 days from this date																											
<i>See the back of this form for your Rights and Responsibilities and mailing instructions.</i>																											
<i>Use Only When BAC Test Results Are Obtained</i>																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Driver's Name:</td> <td style="width: 15%;">Last</td> <td style="width: 15%;">First</td> <td style="width: 15%;">Middle</td> <td style="width: 20%;">Driver License Number:</td> </tr> <tr> <td colspan="5" style="text-align: right; padding-top: 5px;"> Driver License Expiration Date (MM/YY/YY) </td> </tr> <tr> <td colspan="5" style="text-align: right; padding-top: 5px;">  </td> </tr> <tr> <td colspan="5" style="text-align: right; padding-top: 5px;"> City _____ State _____ Zip Code _____ </td> </tr> <tr> <td colspan="5" style="text-align: right; padding-top: 5px;"> Driver License Class _____ Endorsements _____ Restrictions _____ </td> </tr> </table>			Driver's Name:	Last	First	Middle	Driver License Number:	Driver License Expiration Date (MM/YY/YY)										City _____ State _____ Zip Code _____					Driver License Class _____ Endorsements _____ Restrictions _____				
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Driver License Expiration Date (MM/YY/YY)																											
																											
City _____ State _____ Zip Code _____																											
Driver License Class _____ Endorsements _____ Restrictions _____																											
<p>You have been stopped and/or arrested upon probable cause that you were driving a vehicle while your blood alcohol level was over the legal limit. Your driving privilege will be suspended or revoked 15 days from the date of this notice if you do not request a hearing. If you did not give your license to the police officer, you must send it to the Driver License Bureau at P.O. Box 3700, Jefferson City, MO 65105-3700 (S 302.505 to 302.505 RSMo). This notice is separate from any traffic tickets you may have received because of this offense. You will incur an additional cost if you are convicted of a crime.</p>																											
<p>Suspension and Revocation Information: Your license will be suspended for 30 days, followed by a 60-day restricted driving privilege, if you have no alcohol-related offenses within the past 5 years. You may be eligible for an immediate 90-day interlock restricted driving privilege if you install an approved ignition interlock device. For more information about restricted driving privileges and your notices, see the back of the form. Your license will be revoked for one year if your driver record shows one or more alcohol-related enforcement contacts, as defined in § 302.505. You will not be eligible for restricted driving privileges.</p>																											
<p>Hearing Information: You may request a hearing to contest the basis for your suspension or revocation. If you want a hearing, you must make your request within 15 days of the date of this notice. See the back of this form for more information.</p>																											
<p>Notice of Commercial Driver License (CDL) Revocation: You are subject to disqualification of your commercial driving privileges due to this action, whether or not the offense was committed in a commercial motor vehicle (§ 302.700, 302.795, RSMo). You will be sent a separate notice informing you of the disqualification and your appeal rights.</p>																											
<p>Temporary Driving Permit: This is your permit to drive during the next 15 days only if your Missouri driver license is not expired and is not currently suspended, revoked, or denied as a result of a prior incident. You must carry this notice with you while driving.</p>																											
<p>Valid License Surrendered: <input type="checkbox"/> Yes (Abandon) <input type="checkbox"/> No</p>																											
<p>Law Enforcement Note: Check driver record for the most current information</p>																											
<p>By order of the Director of Revenue or his/her delegate:</p>																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Printed Name of Arresting Officer</td> <td style="width: 50%;">Name of Patrol Agency</td> </tr> <tr> <td colspan="2" style="text-align: center; padding-top: 5px;">   </td> </tr> <tr> <td colspan="2" style="text-align: center; padding-top: 5px;"> I acknowledge receipt of this notice from the arresting officer </td> </tr> <tr> <td colspan="2" style="text-align: center; padding-top: 5px;">   </td> </tr> </table>			Printed Name of Arresting Officer	Name of Patrol Agency	 		I acknowledge receipt of this notice from the arresting officer		 																		
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<p>Request for Immediate 30-Day Interlock Restricted Driving Privilege - Ignition Interlock Device is Required</p>																											
<p>I am requesting an immediate restricted driving privilege. I understand that the restricted driving privilege will not be issued until I have on file with the Driver License Bureau proof of installation of an approved ignition interlock device for any vehicle I operate, and proof of insurance, commonly filed as an SH-22 (if 21 years of age or older). Prior to license reinstatement, I must obtain certification from my ignition interlock installer that I have completed my period of restricted driving privilege without violation. I understand that if I do not obtain such certification, I will be required to serve an additional 30-day period of restricted privilege with ignition interlock or a 30-day period without any driving privilege.</p>																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Name (Print, Please Note):</td> <td style="width: 33%;">Date of Birth (MM/DD/YYYY):</td> <td style="width: 34%;">Driver License Number:</td> </tr> <tr> <td colspan="2">Address:</td> <td>County of Arrest:</td> </tr> <tr> <td colspan="2">City, State, Zip Code:</td> <td>(Circle)</td> </tr> <tr> <td>Date of Arrest (MM/DD/YYYY):</td> <td>E-mail Address:</td> <td>User's Signature (Required):</td> </tr> <tr> <td colspan="3" style="text-align: center; padding-top: 5px;">  </td> </tr> </table>			Name (Print, Please Note):	Date of Birth (MM/DD/YYYY):	Driver License Number:	Address:		County of Arrest:	City, State, Zip Code:		(Circle)	Date of Arrest (MM/DD/YYYY):	E-mail Address:	User's Signature (Required):													
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<p>Request for Administrative Hearing - Request a hearing to review the suspension or revocation of my driving privilege (see back of notice for instructions).</p>																											
<p>If you want an in-person hearing you must check the box below. If you do not check the box for an in-person hearing, a telephone hearing will be scheduled. No further request for an in-person hearing will be granted.</p>																											
<p>Select Only One Box</p>																											
<p><input type="checkbox"/> I Request a Telephone Hearing <input type="checkbox"/> I Request an In-Person Hearing Name of Person Arrested (Print Name):</p>																											
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DISTRIBUTION ORIGINAL - DRIVER CARBON - DEPARTMENT OF REVENUE

Appendix 2

Rights and Responsibilities

These are your legal rights. If you do not understand, contact a licensed attorney. You may have options that must be selected within the next 15 days.

How do I request a hearing?

To request a hearing, you must complete and submit the "Request for Administrative Hearing" form (see front of notice) within 15 days from the date of this notice. Mail your request to: Missouri Department of Revenue, P.O. Box 475, Jefferson City, MO 65105-0475, or fax to: (573) 751-7151. If you do not timely request a hearing, your driving privilege will be suspended or revoked 15 days from the date of this notice and you will have no further appeals rights. If a hearing is granted, your suspension or revocation will be stayed and you will be notified of the date and time of your hearing. Note: You do not need a restricted driving privilege if you request a hearing.

How do I obtain a restricted driving privilege?

If you have had a prior alcohol-related offense within the past 5 years, you are not eligible for a restricted driving privilege. If you have no alcohol-related offenses in the past 5 years and your license is not currently suspended or revoked for other reasons, you have two options:

Option 1 - 90-day interlock restricted driving privilege with an ignition interlock device

The interlock restricted privilege is for the limited purpose of driving in connection with employment, education, medical treatment, alcohol or drug treatment, ignition interlock provider, court obligations, religious services, child care, court-ordered visitation and custodial obligations, and fueling and grocery requirements.

To receive a 90-day interlock restricted driving privilege you must:

- Complete and submit the "Request for Immediate 90-Day Restricted Driving Privilege" form within 15 days of this notice (see front of notice). Mail your request to: Driver License Bureau, P.O. Box 3750, Jefferson City, MO 65105-3750 or fax to: (573) 526-3452.
- File proof of installation of an approved ignition interlock device for any vehicle you operate. For information regarding installation of the ignition interlock device, visit <http://modot.mo.gov/safety/ignitioninterlock.htm> or call (800) 801-3588; and
- File proof of insurance, commonly filed as an SR-22, only if you are 21 years of age or older (see 3 below).

Note: Under this option, in order to reinstate your license after you complete your suspension period, you must maintain installation of your ignition interlock device during the restricted driving privilege period without any violation. "Violation" is defined as any incident of device tampering, circumvention, or breath-alcohol level of 0.025% or above. You should not remove the device until the installer has certified to the Department of Revenue that you are violation free. You must request this certification from your ignition interlock installer. Failure to obtain certification will result in a 30-day extension of your restricted driving privilege with the ignition interlock requirement or an additional 30-day suspension without any driving privileges. If you are a prior offender, see number 4 under "How do I get reinstated?"

Options 2 - 90-day suspension followed by 90-day restricted driving privilege

The 60-day restricted privilege is only for the limited purpose of driving in connection with employment, education, alcohol treatment, or ignition interlock provider.

To receive a 60-day restricted driving privilege you must:

- Serve a 30-day suspension period;
- File proof of insurance, commonly filed as an SR-22, only if you are 21 years of age or older (see 3 below); and
- File proof of installation of an approved ignition interlock device for any vehicle you operate if you have had a prior alcohol offense. For information regarding installation of the ignition interlock device, visit <http://modot.mo.gov/safety/ignitioninterlock.htm> or call (800) 801-3588.

How do I get reinstated?

Visit our website at <http://dor.mo.gov/drivers/> for complete reinstatement information or call our interactive voice response system at (573) 526-2407 - available 24 hours a day, 7 days a week. For reinstatement, you must have the following on file with the Driver License Bureau, P.O. Box 200, Jefferson City, MO 65105-0200, before your suspension or revocation period ends:

1. Substance Abuse Traffic Offender Program (SATOP) completion form or a comparable program form. The Division of Behavioral Health will notify us after you complete the program. For more information regarding SATOP, visit <http://dmh.mo.gov/ada/satop/> or call (573) 522-4020.
2. A reinstatement fee of \$45. Payments may be accepted by telephone using most major debit or credit cards. You may also pay by cashier's check, money order, or personal check made payable to the Missouri Department of Revenue. Please include your full name, address, date of birth, and driver license number on the payment. The Department may electronically reissue checks returned for insufficient funds.
3. Proof of financial responsibility commonly filed as an SR-22. Contact your insurance company for information regarding this form. You must maintain proof of financial responsibility for two years from the date your license suspension or revocation began or your driving privilege will be suspended again for the remainder of the two-year period. The SR-22 is not required for a first suspension for those under age 21.
4. Proof of installation of an approved ignition interlock device only if you have a prior alcohol-related offense (Section 302.525 RSMo). The installer of the device will notify the Driver License Bureau after the installation has been completed. A device must be installed and maintained on any vehicle you operate for a minimum period of six months from the date of reinstatement. You will be reinstated for the last three months of the six-month period. If you have any violations, as determined by the device manufacturer, during the monitoring period, your requirement to maintain the device will be extended until you complete a three-consecutive month period without violation. For information regarding installation of the ignition interlock device, visit <http://modot.mo.gov/safety/ignitioninterlock.htm> or call (800) 801-3588.

Driver License Bureau
P.O. Box 3700
Jefferson City, MO 65105-3700

Phone: (573) 751-4833
Fax: (573) 526-3452
E-mail: mvd1@dor.mo.gov

Visit <http://dor.mo.gov/drivers/>
for additional information.



Form 0380 (Revised 01/2011)

Appendix 3

 <p>MISSOURI DEPARTMENT OF REVENUE DRIVER LICENSE BUREAU PO BOX 3700 JEFFERSON CITY MO 65105-3700</p> <p>REFUSAL TO SUBMIT TO ALCOHOL OR DRUG TEST NOTICE OF REVOCATION OF YOUR DRIVING PRIVILEGE 15 DAY DRIVING PERMIT</p>		<table border="1"> <tr> <td>FORM</td> <td>TELEPHONE NUMBER (573) 751-4833</td> <td>FAX NUMBER (573) 526-0452</td> </tr> <tr> <td>4323</td> <td colspan="2">REVOCATION STARTS 15 DAYS FROM DATE NOTICE IS ISSUED</td> </tr> <tr> <td colspan="3">(REV. 01-2017)</td> </tr> </table>	FORM	TELEPHONE NUMBER (573) 751-4833	FAX NUMBER (573) 526-0452	4323	REVOCATION STARTS 15 DAYS FROM DATE NOTICE IS ISSUED		(REV. 01-2017)		
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4323	REVOCATION STARTS 15 DAYS FROM DATE NOTICE IS ISSUED										
(REV. 01-2017)											
USE ONLY FOR REFUSAL TO TEST											
DRIVER'S NAME - LAST FIRST MIDDLE		DRIVER LICENSE NUMBER									
STREET, RFD, OR BOX		DRIVER LICENSE CLASS EXPIRATION DATE (MM/DD/YYYY)									
CITY	STATE	ZIP CODE									
ARRESTED OR STOPPED PERSON'S SIGNATURE											
<p>I ACKNOWLEDGE RECEIPT OF THIS NOTICE FROM ► THE ARRESTING OFFICER</p> <p>You refused to submit to a test to determine the alcohol or drug level of your breath, blood, or urine. Your driving privilege will be revoked for one year, 15 days from the date of this notice. If you did not give your driver license to the police officer, you must send it to the Driver License Bureau at the address shown above. (Sections 302.574 and 577.041, RSMo). This notice is separate from any traffic tickets you may have received because of this offense. You will be sent an additional notice if you are convicted in court.</p> <p>Send the following items to the Driver License Bureau, 301 West High Street, Room 470, PO Box 200, Jefferson City, MO 65105-0200, before your revocation period ends.</p> <ul style="list-style-type: none"> Substance Abuse Traffic Offender Program (SATOP) completion form or a comparable program form. The Division of Behavioral Health will notify us after you complete the program. For information regarding SATOP, visit http://dmh.mo.gov/ada/satop/ or call (573) 522-4020. A reinstatement fee in the amount of \$45. Payments may be accepted by telephone using most major debit or credit cards. You may also pay by cashier's check, money order, or personal check made payable to the Missouri Department of Revenue. Please include your full name, address, date of birth, and driver license number on the payment. The Department may electronically resubmit checks returned for insufficient funds. Proof of financial responsibility, commonly filed as an SR-22. Contact your local insurance company for information regarding this form. You must maintain proof of financial responsibility for two years from the date your license revocation began or your driving privilege will be suspended for the remainder of the two-year period. Proof of installation of an approved ignition interlock device only if you have had a prior alcohol-related offense. (Section 302.525, RSMo). The installer of the device will notify the Driver License Bureau after the installation has been completed. A device must be installed and maintained on any vehicle you operate for a minimum period of six months from the date of reinstatement. You will be monitored for the last three months of the six-month period. If you have any violations, as determined by the device manufacturer, during the monitoring period, your requirement to maintain the device will be extended until you complete a three-consecutive month period without violation. For information regarding installation of the ignition interlock device, call 800-801-3588 or visit http://modot.mo.gov/safety/ignitioninterlock.htm. 											
<p>NOTICE: COMMERCIAL DRIVER LICENSE (CDL) HOLDERS You may additionally be subject to disqualification of your commercial driving privileges due to this action, whether or not you were operating a commercial motor vehicle at the time of this offense (Sections 302.700 and 302.755, RSMo). If you are subject to disqualification, you will be sent a separate notice informing you of the disqualification and your appeal rights (Section 302.311, RSMo).</p>											
<p>HOW DO I APPEAL THE REVOCATION OF MY LICENSE? You have 30 days from the date this notice was issued to file a Petition for Review with the Circuit or Associate Circuit Court. Your petition must be filed in the county where the arrest or stop occurred. (Sections 302.311 and 302.574, RSMo)</p>											
<p>TEMPORARY 15 DAY DRIVING PERMIT This is your permit to drive during the next 15 days only if your Missouri driver license is not expired and is not currently suspended, revoked, or denied as a result of a prior incident. You must carry this notice with you while driving.</p>											
<p>Valid License Surrendered <input type="checkbox"/> YES (Attached to carbon copy for Department of Revenue) <input type="checkbox"/> NO</p>											
<p>LAW ENFORCEMENT NOTE — Check driver record for the most current information. This permit is not valid if the driver license is expired, suspended, or revoked or if the person is not licensed to drive in Missouri.</p>											
<p>BY ORDER OF THE DIRECTOR OF REVENUE OR HIS OR HER DELEGATE</p>											
PRINTED NAME OF ARRESTING OFFICER		NAME OF POLICE AGENCY									
VISIT OUR WEBSITE AT http://www.dor.mo.gov/											
DISTRIBUTION: ORIGINAL DRIVER CARBON — DEPARTMENT OF REVENUE		Form 4323 (Revised 01-2017)									

Appendix 4A

MISSOURI DEPARTMENT OF REVENUE DRIVER LICENSE BUREAU ALCOHOL INFLUENCE REPORT									
FORM 2389 (REV. 7-2007)		DRAFT NUMBER _____ REPORT NUMBER _____							
DATE OF ARREST/CUSTODY _____		TIME OF INITIAL CONTACT _____ <small>(MIL)</small>	TIME OF ARREST/CUSTODY _____ <small>(MIL)</small>						
LOCATION OF ARREST/CUSTODY _____		<small>STATE</small>		COUNTY OF ARREST/CUSTODY _____ <small>COUNTY OR CITY ORDINANCE OTHER</small>					
<small>REASON FOR INITIAL CONTACT</small> <input type="checkbox"/> TRAFFIC VIOLATION <input type="checkbox"/> ACCIDENT <input type="checkbox"/> SUSPECTED CRIMINAL <input type="checkbox"/> OTHER - EXPLAIN _____				<small>PERMITTING OR SUSPENDED BY</small> <small>SUBJECT WAS OBSERVED DRIVING/OPERATING BY</small>					
<small>FULL NAME</small> <small>DATE OF BIRTH: MM DD YYYY</small>									
<small>DRIVE ENT ADDRESS</small>		<small>CITY STATE ZIP CODE</small>							
<small>IF IC AT ION N Y/N</small>		<small>FACE</small> <small>NUK</small>	<small>HEIGHT</small> <small>VEHT</small>	<small>WEIGHT</small> <small>WEIG</small>	<small>EYES</small> <small>EYES</small>	<small>HAIR</small> <small>HAI</small>	<small>CONVENTIONAL METER IN VEHICLE HAZARDOUS MATERIALS KEYLESS INTERLOCK DEVICE INSTALLED ON VEHICLE</small>		
<small>DRIVER LICENSE NUMBER</small> <small>STATE</small> <small>CDL HOLDER</small> <small>YEAR</small>		<small>CDL HOLDER</small> <small>YEAR</small> <small>NO</small>		<small>VEHICLE LICENSE NUMBER</small> <small>STATE</small> <small>YEAR</small> <small>NO</small>					
<small>DRIVING DISQUALIFICATION</small> <small>YEAR</small>		<small>MAKE</small>		<small>MODEL</small>		<small>COLOR</small>		<small>VIN</small>	
<small>YES / NO</small>									
OFFICER'S OBSERVATION MADE PRIOR TO ARREST/CUSTODY (Check appropriate box(es) and add any pertinent remarks.)									
<small>BREATH</small> <input type="checkbox"/> ODOR OF ALCOHOLIC BEVERAGE <input type="checkbox"/> FAINT <input type="checkbox"/> MODERATE <input type="checkbox"/> STRONG <input type="checkbox"/> NONE <input type="checkbox"/> ODOR OF MARIJUANA/ANALOGUE <input type="checkbox"/> YES <input type="checkbox"/> NO									
<small>EYES/PUPIL(S)</small> <input type="checkbox"/> NORMA <input type="checkbox"/> CONSTRICTED <input type="checkbox"/> SLOW REACTION TO LIGHT <input type="checkbox"/> GLASSY <input type="checkbox"/> STARING <input type="checkbox"/> DILATED <input type="checkbox"/> SWAYING <input type="checkbox"/> STAGGERING <input type="checkbox"/> STUMBLING <input type="checkbox"/> FALLING <input type="checkbox"/> OTHER:									
<small>BALANCE/WALKING</small> <input type="checkbox"/> UNCERTAIN <input type="checkbox"/> SWAYING <input type="checkbox"/> STAGGERING <input type="checkbox"/> STUMBLING <input type="checkbox"/> FALLING <input type="checkbox"/> OTHER:									
<small>SPEECH</small> <input type="checkbox"/> SLURRED <input type="checkbox"/> CONFUSED <input type="checkbox"/> INCOHERENT <input type="checkbox"/> STUTTERING <input type="checkbox"/> MUMBLED <input type="checkbox"/> OTHER:									
<small>CLOTHING/FOOTWEAR</small> <small>DE-SCRIBE</small> <small>SOILED BY:</small>									
<small>UNUSUAL ACTIONS</small> <input type="checkbox"/> PROFANITY <input type="checkbox"/> HICCUPS <input type="checkbox"/> BELCHING <input type="checkbox"/> VOMITING <input type="checkbox"/> FIGHTING <input type="checkbox"/> OTHER:									
<small>ATTITUDE</small> <small>DESCRIBE:</small>									
SOBERITY TESTS GIVEN PRIOR TO ARREST/CUSTODY (Check appropriate box(es) and add any pertinent remarks.)									
<small>HORIZONTAL GAZE NYSTAGMUS</small> <small>WALK-AND-TURN</small>									
<small>1. <input type="checkbox"/> Eyes Tracked Equally</small> <small>2. <input type="checkbox"/> Pupils of Equal Size</small> <small>3. <input type="checkbox"/> Resting Nystagmus</small>									
<small>4. LEFT</small> <small>RIGHT</small> <small>No smooth Pursuit</small> <small>Optokinetic Nystagmus at maximum deviation</small> <small>Drugs before or with some white showing</small> <small>(See verification on page 4.)</small>									
<small>fails to maintain level-to-toe stance</small> <small>Starts before instructed to begin</small> <small>Steps while walking to steady self</small> <small>Does not touch heel to toe (i.e., raises by more than 1/2 inch)</small> <small>Loses balance while walking (i.e., steps off line)</small> <small>Uses arms for balance</small> <small>Loses balance while turning/improper turn</small> <small>Incorrect number of steps</small> <small>Cannot perform or refused to do test</small> <small>Explain: _____</small>									
<small>5. ONE LEG STAND</small> <small>(Subject may stand on either foot for test. Indicate foot stood on below.)</small> <small>Left</small> <small>Right</small> <small>Stays while balancing</small> <small>Uses arms for balance (i.e., raises arms more than 6 inches)</small> <small>Flaps</small> <small>Puts foot down</small> <small>Cannot perform or refused to do leg</small> <small>Explain: _____</small>									
<small>6. VERTIGO / GAZING NYSTAGMUS PRESENT</small>									
<small>OTHER ANY OTHER TESTS NOT LISTED ABOVE</small> <small>REMARKS</small>									
<small>RESULT OF MINI-DRINK / BREATH TEST (PBT) POSITIVE FOR ALCOHOL</small> <small>YES / NO / NA</small>									

Appendix 4B

DOR-2389			PAGE 2
IMPLIED CONSENT TIME ADVISED:			(MIL)
FOR USE IN DWI ARREST ONLY		FOR USE IN ZERO TOLERANCE ONLY	FOR USE IN NON-DWI ARREST FOR FATALITY OR SERIOUS PHYSICAL INJURY ONLY
<p><input type="checkbox"/> 1. You are under arrest and I have reasonable grounds to believe you were driving a motor vehicle while you were in an intoxicated or impaired condition. OR ...</p> <p><input type="checkbox"/> 2. To determine the alcohol/drug content of your blood, I am requesting you submit to a chemical test of your <input type="checkbox"/> Breath <input type="checkbox"/> Blood <input type="checkbox"/> Other (Check no more than two).</p> <p><input type="checkbox"/> 3. If you refuse to take the test(s), your driver license will immediately be revoked for one year.</p> <p><input type="checkbox"/> 4. Evidence of your refusal to take the test(s) may be used against you in prosecution in a court of law.</p> <p><input type="checkbox"/> 5. Having been informed of the reasons for requesting the test(s), will you take the test(s)? <input type="checkbox"/> YES <input type="checkbox"/> NO Time: _____ (MIL)</p>		<p><input type="checkbox"/> 1. You have been stopped and are under the age of 21; I have reasonable grounds to believe that you were driving a motor vehicle with a blood alcohol content of .02% or more. OR ...</p>	
<p><small>IF SUBJECT REFUSED TEST(S) WAS ATTORNEY REQUESTED PRORO TO REFUSAL? <input type="checkbox"/> YES <input type="checkbox"/> NO</small></p>		<p><small>TIME SUBJECT ASKED FOR ATTORNEY NAME OF ATTORNEY PHONES FOR ADVICE</small></p>	
15 MINUTE OBSERVATION PERIOD STARTED AT: _____ (MIL)			
CHECK TYPE OF INSTRUMENT USED AND BOXES FOR EACH STEP (ATTACH MOST RECENT MAINTENANCE REPORT COMPLETED PRIOR TO THIS BREATH TEST.) — IF BLOOD TEST, SEE PAGE 4.			
<input type="checkbox"/> INTOXILYZER 5000		<input type="checkbox"/> DATAMASTER	
<p><input type="checkbox"/> 1. Subject observed for at least 15 minutes by No smoking or oral intake of any material during this time; if vomiting occurs, start over with the 15 minute observation period.</p> <p><input type="checkbox"/> 2. Ensure that power switch is ON and then press the START TEST button.</p> <p><input type="checkbox"/> 3. Enter test record card.</p> <p><input type="checkbox"/> 4. Enter subject and officer information.</p> <p><input type="checkbox"/> 5. When display reads PLEASE BLOW, insert mouthpiece and take the subject's breath sample.</p> <p><input type="checkbox"/> 6. When test record is printed, remove test record and attach printout to this report.</p>		<p><input type="checkbox"/> 1. Subject observed for at least 15 minutes by No smoking or oral intake of any material during this time; if vomiting occurs, start over with the 15 minute observation period.</p> <p><input type="checkbox"/> 2. Ensure that power switch is ON.</p> <p><input type="checkbox"/> 3. Press RUN button.</p> <p><input type="checkbox"/> 4. When display requests INSERT TICKET, insert evidence ticket.</p> <p><input type="checkbox"/> 5. Enter subject and officer information.</p> <p><input type="checkbox"/> 6. When display reads PLEASE BLOW and gives audible beep, take subject's breath sample.</p> <p><input type="checkbox"/> 7. When printer has completed printing out test result, remove ticket from printer. Attach printout to this report.</p>	
<small>OTHER (ATTACH CHECKLIST OR LAB REPORT) CERTIFICATION OF EXAMINATION BY OPERATOR</small>			
<small>AS SET FORTH IN THE RULES PHOMULGATED BY THE DEPARTMENT OF HEALTH RELATED TO THE DETERMINATION OF BLOOD ALCOHOL BY BREATH ANALYSIS, I CERTIFY BY COMPLETING THE BELOW THAT</small>			
<p>1. There was no deviation from the procedure approved by the department. 2. I am authorized to operate the instrument.</p> <p>3. To the best of my knowledge, the instrument was functioning properly. 4. No noticeable odor was present inside the room where and when this test was being conducted.</p>			
NAME OF OPERATOR	TROOP OR AGENCY	DEPARTMENT OF HEALTH PERMIT NUMBER	EXPIRATION DATE
DATE	STOCKS NUMBER	Serial Number	INVENTORY NUMBER
BLOOD ALCOHOL CONCENTRATION BY WEIGHT			

Appendix 4C

DOR-2389

FORM NUMBER

JUDGE'S NUMBER

PAGE 3

MIRANDA RIGHTS

BECAUSE YOU ARE UNDER ARREST, I AM INFORMING YOU OF YOUR CONSTITUTIONAL RIGHTS (MIRANDA WARNING)

- 1. You have the right to remain silent.
- 2. Anything you say can and will be used against you in a court of law.
- 3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
- 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.
- 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

RIGHTS GIVEN AT	SCENE	STATION	DO YOU UNDERSTAND THE RIGHTS I HAVE EXPLAINED TO YOU?	TIME ADVISED	DATE
HOSPITAL	EN ROUTE TO STATION		<input type="checkbox"/> YES <input type="checkbox"/> NO		(MM/DD/YY)

INTERVIEWER TO COMPLETE

INTERVIEW DATE	TIME	INTERVIEWER'S NAME	TIME OF ACCIDENT	
				(MM/DD/YY)

WAS SUBJECT INVOLVED IN AN ACCIDENT?

YES	NO	DATE OF ACCIDENT	TIME OF ACCIDENT
-----	----	------------------	------------------

ACCIDENT INFORMATION (IF APPLICABLE) — RECORD PERSON'S RESPONSES

WERE YOU INVOLVED IN A MOTOR VEHICLE ACCIDENT TODAY?	WERE YOU OPERATING THE VEHICLE AT THE TIME OF THE ACCIDENT?
<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO

WHICH VEHICLE WAS INVOLVED?

WHICH VEHICLE WAS INVOLVED?	TIME	WHERE	HOW MUCH?
			(MM/DD/YY)

INTERVIEW — RECORD PERSON'S RESPONSES

WHAT TIME IS IT NOW?	WHAT IS THE DATE?	WHAT DAY OF THE WEEK IS IT?	WHAT CITY (COUNTRY) ARE YOU IN NOW?

WHAT DID YOU LAST EAT?	WHERE DID YOU LAST EAT?	TIME

WHAT IS YOUR OCCUPATION?	WHEN DID YOU LAST WORK?	WHEN DID YOU LAST SLEEP?	HOW LONG?

WHAT WERE YOU DOING DURING THE LAST THREE HOURS?	IF YES, WHERE?	WHEN?	HOW MUCH?

WERE YOU DRINKING ALCOHOL?	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO			

HAVE YOU BEEN DRINKING?	IF YES, WHERE?	TIME STARTED	TIME STOPPED
<input type="checkbox"/> YES <input type="checkbox"/> NO			

HOW MUCH?	WHERE?	ARE YOU UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE?
		<input type="checkbox"/> YES <input type="checkbox"/> NO

WERE YOU DRINKING ALCOHOL?	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO			

DO YOU HAVE ANY MEDICINE OR DRUGS (LEGAL OR ILLEGAL) IN YOUR POCKETS?	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO			

DO YOU HAVE ANY MEDICAL CONDITIONS?	IF YES, EXPLAIN	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO				

ARE YOU TAKING ANY MEDICATIONS OR DRUGS (MEDICINES, INJECTIONS OR USES) OF ANY KIND, SUCH AS INSULIN?	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO			

DO YOU HAVE ANY MEDICAL CONDITIONS?	IF YES, EXPLAIN	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO				

DO YOU HAVE ANY MEDICAL CONDITIONS?	IF YES, EXPLAIN	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO				

DO YOU HAVE ANY MEDICAL CONDITIONS?	IF YES, EXPLAIN	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO				

DO YOU HAVE ANY MEDICAL CONDITIONS?	IF YES, EXPLAIN	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO				

DO YOU HAVE ANY MEDICAL CONDITIONS?	IF YES, EXPLAIN	IF YES, WHERE?	WHEN?	HOW MUCH?
<input type="checkbox"/> YES <input type="checkbox"/> NO				

MO 200-2015 (7/2007)

Appendix 4D

DOA-2389

PAGE 4

STATEMENT OF BLOOD DRAWER (COMPLETE OR ATTACH SEPARATE STATEMENT)

In accordance with the provisions of Section 577.029, RSMo, at the place of my employment and at the request and direction of a law enforcement officer, I withdrew blood from _____ for the purpose of determining the alcohol content of the blood, using good faith medical judgment, and in strict accord with my training and accepted medical practices that such procedure did not endanger the life or health of the person. A nonalcoholic antiseptic was used for cleansing the skin prior to venapuncture. The sample was labeled with subject's identification and given to the requesting law enforcement officer. The blood was withdrawn into a clean and dry sterile vessel by means of a previously unused and sterile needle and was sealed with an air-tight, inert stopper.

DATE (MM/DD/YY)	TIME AM/PM	PLACE OF EMPLOYMENT/EMPLOYER
TITLE (CHECK ONE): <input type="checkbox"/> LICENSED PHYSICIAN <input type="checkbox"/> REGISTERED NURSE <input type="checkbox"/> TRAINED MEDICAL TECHNICIAN (Echotomist, Paramedic, etc.)		WORK TELEPHONE
SIGNATURE		NAME (TYPE OR PRINT)

VERIFICATION/IDENTIFICATION OF LAW ENFORCEMENT OFFICER. (PLEASE COMPLETE AND ATTACH NARRATIVE STATEMENT OF THE FACTS FOR THIS INVESTIGATION.)

THE FOLLOWING DOCUMENTS RELATING TO THIS ARREST/STOP ARE HEREBY INCORPORATED INTO THIS REPORT:

- Narrative (attached).
- Accident Report, if applicable.
- Missouri Driver License, if secured.
- Copy of most recent Maintenance Report prior to test.
- Notice of Suspension/Revocation (Revenue's copy), if issued.
- All other reports incidental to this arrest/stop and BAC testing.
- Copy of Citation (UC) and/or complaint filed with the Court, if applicable.
- Report(s) of the results of all chemical tests conducted showing blood alcohol content if not included on page 2 of this form (Checklist or Lab Report).

CERTIFICATION OF FIELD SOBRIETY TEST TRAINING (Check box if applicable)

- I hereby certify that I have received a minimum of 8 hours training on administering, interpreting and scoring the horizontal gaze nystagmus test.

HEREBY SWEAR UPON MY OATH, AND DO STATE AS FOLLOWS:

At all times mentioned herein, I was employed as a member of the below-stated Police Agency, and I am licensed, or exempt from certification pursuant to Chapter 590, RSMo, by the Director of Public Safety as having completed a program of mandatory standards for the training of peace officers in this State pursuant to Chapter 590, RSMo, and I arrested the above named person for a violation of a county or city ordinance prohibiting driving while intoxicated or an alcohol-related traffic offense or Section 577.010 or 577.012, RSMo, or conducted a .020% or more blood alcohol content-related stop. I certify that the information I have provided is true and correct to the best of my knowledge under the penalties of perjury.

CHECK APPROPRIATE BOX ►		<input type="checkbox"/> HIGHWAY PATROL	<input type="checkbox"/> MUNICIPAL OFFICER
		<input type="checkbox"/> COUNTY OFFICER	<input type="checkbox"/> ELECTED OFFICIAL
NAME OF LAW ENFORCEMENT OFFICER		BADGE NUMBER/RANK	NAME OF POLICE AGENCY/TROOP LETTER
COMPLETE MAILING ADDRESS		BUSINESS TELEPHONE NUMBER	
CITY, STATE, ZIP CODE			
SIGNATURE — MUST SIGN			

MO 490-0155 (7-2007)

Appendix 5A



IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

Judge or Division:	Case Number:
	Court ORI Number: MO010933J
Petitioner:	
SSN:	

(Date File Stamp)

Adult Abuse Petitioner Information (Confidential Record)

Petitioner has indicated that disclosure of his or her current address or place of residence may endanger him or her.

This information must be maintained as

Confidential and is for Court Use Only.

Permanent Address: _____

Daytime Phone Number: _____

Evening Phone Number: _____

Temporary and/or Mailing Address (if different from above):

Daytime Phone Number: _____

Evening Phone Number: _____

Instructions to Clerk

Maintain the closed portion(s) of the record in a sealed manila envelope within the file. The file can be maintained with other open records. If a request is made to review the open portion of the file, the envelope can be removed from the file. Access to the record must be restricted to avoid access to the closed portion of the record.

Appendix 5B



IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

Judge or Division:	Case Number: Court ORI Number: MO010033J
Petitioner: Petitioner's DOB: Sex <input type="checkbox"/> F <input checked="" type="checkbox"/> M Race: _____ vs.	Respondent's Home Address: Home Phone Number: _____ (Date File Stamp)
Respondent: Alias/Nicknames: _____	Respondent's Work Address: Work Phone Number: _____ Work Hours: _____
Respondent's DOB: SSN (if known): Race: _____ Sex: <input type="checkbox"/> F <input checked="" type="checkbox"/> M Eye Color: _____ Age: _____ Hair Color: _____ Height: _____ Hair Length/Style: _____ Weight: _____ (Identifying Information for use by Law Enforcement)	Other Locations Where Respondent May Be Served: Respondent's Relationship to Petitioner: <input type="checkbox"/> Spouse <input type="checkbox"/> Ex-Spouse <input type="checkbox"/> Related by Blood/Marriage <input type="checkbox"/> Child(ren) in Common <input type="checkbox"/> Resided Together <input type="checkbox"/> Other _____
Visible Identifying Marks (e.g. tattoos, birthmarks, braces, mustache, beard, pierced ear, glasses) _____	

Adult Abuse/Stalking Petition for Order of Protection

1. I am Petitioner and Respondent is _____	<input type="checkbox"/> at least 18 years of age <input type="checkbox"/> at least 18 years of age	<input type="checkbox"/> under 18 but emancipated <input type="checkbox"/> under 18 but emancipated
2. I reside in _____ in the County of _____ Respondent may be found in _____ in the County of _____	(city), _____ (state).	
3. An act of abuse or stalking occurred at _____ (city), _____ (state), in the County of _____	(address).	
4. Respondent and I: (check one or more) <input type="checkbox"/> are related by blood. <input type="checkbox"/> are spouses. <input type="checkbox"/> were spouses. <input type="checkbox"/> have child(ren) in common. <input type="checkbox"/> are or were residing together.	<input type="checkbox"/> were related by marriage. <input type="checkbox"/> are related by marriage. <input type="checkbox"/> have no relationship other than Respondent has stalked me. <input type="checkbox"/> are in a continuing romantic or intimate social relationship. <input type="checkbox"/> were in a continuing romantic or intimate social relationship.	
Complete for Adult Abuse Petition Only.		
5. Respondent and I: (check one or more) <input type="checkbox"/> reside together. <input type="checkbox"/> previously resided together at _____ (city), _____ (state), in the County of _____ <input type="checkbox"/> never resided together.	(address), _____ (state), in the County of _____	
Complete for Stalking Petition Only.		
6. Respondent is stalking me. Explain relationship (example: co-workers, neighbors, etc.) _____		

Appendix 5C

Complete for Adult Abuse Petition Only.																																									
<p>7. The residence in which I live is: (check one or more)</p> <p><input type="checkbox"/> jointly owned, leased or rented or jointly occupied by Respondent and me. <input type="checkbox"/> owned, leased, rented or occupied by me. <input type="checkbox"/> jointly owned, leased, rented or occupied by me and someone other than Respondent. <input type="checkbox"/> owned, leased, rented or occupied by someone else, and Respondent is my spouse. <input type="checkbox"/> jointly occupied by me and another person, and Respondent has no property interest therein.</p>																																									
<p>8. Respondent has knowingly and intentionally: (check at least one)</p> <p><input type="checkbox"/> coerced me <input type="checkbox"/> followed me from place to place <input type="checkbox"/> stalked me <input type="checkbox"/> caused or attempted to cause me physical harm <input type="checkbox"/> harassed me <input type="checkbox"/> placed or attempted to place me in apprehension of immediate physical harm <input type="checkbox"/> sexually assaulted me <input type="checkbox"/> threatened to do any of the above <input type="checkbox"/> unlawfully imprisoned me</p> <p>by the following act(s). (Include the most recent date(s) of each act described.)</p> <hr/> <hr/>																																									
<p>9. I am afraid of Respondent, and there is an immediate and present danger of abuse or stalking of me because: (describe)</p> <hr/> <hr/>																																									
<p>10. <input type="checkbox"/> Photographs/Exhibits are filed as evidence of my injuries.</p>																																									
<p>Complete for Adult Abuse Petition Only.</p>																																									
<p>11. It is in the best interest of the minor children that custody be awarded as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 30%;">Child's Name</th> <th style="text-align: center; width: 15%;">D.O.B.</th> <th style="text-align: center; width: 15%;">SSN</th> <th style="text-align: center; width: 15%;">Age</th> <th colspan="2" style="text-align: center; width: 25%;">Address (If other than Petitioner)</th> </tr> </thead> <tbody> <tr> <td>1. _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td colspan="2" style="text-align: center;">_____</td> </tr> <tr> <td>2. _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td colspan="2" style="text-align: center;">_____</td> </tr> <tr> <td>3. _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td colspan="2" style="text-align: center;">_____</td> </tr> <tr> <td>4. _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td colspan="2" style="text-align: center;">_____</td> </tr> <tr> <td>5. _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td colspan="2" style="text-align: center;">_____</td> </tr> </tbody> </table>						Child's Name	D.O.B.	SSN	Age	Address (If other than Petitioner)		1. _____	_____	_____	_____	_____		2. _____	_____	_____	_____	_____		3. _____	_____	_____	_____	_____		4. _____	_____	_____	_____	_____		5. _____	_____	_____	_____	_____	
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5. _____	_____	_____	_____	_____																																					
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 25%;">Who did each Child reside with during last six months</th> <th style="text-align: left; width: 25%;">Relationship to Parties (Specify if not Respondent's Child)</th> <th style="text-align: left; width: 25%;">Persons to Receive Custody</th> <th colspan="2" style="text-align: center; width: 25%;">Custody (check one or both)</th> </tr> </thead> <tbody> <tr> <td>1. _____</td> <td>_____</td> <td>_____</td> <td style="text-align: center;"><input type="checkbox"/> Temporary</td> <td style="text-align: center;"><input type="checkbox"/> Full</td> </tr> <tr> <td>2. _____</td> <td>_____</td> <td>_____</td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> </tr> <tr> <td>3. _____</td> <td>_____</td> <td>_____</td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> </tr> <tr> <td>4. _____</td> <td>_____</td> <td>_____</td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> </tr> <tr> <td>5. _____</td> <td>_____</td> <td>_____</td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></td> </tr> </tbody> </table> <p>(If necessary, attach additional sheets.)</p>						Who did each Child reside with during last six months	Relationship to Parties (Specify if not Respondent's Child)	Persons to Receive Custody	Custody (check one or both)		1. _____	_____	_____	<input type="checkbox"/> Temporary	<input type="checkbox"/> Full	2. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	3. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	4. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	5. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>						
Who did each Child reside with during last six months	Relationship to Parties (Specify if not Respondent's Child)	Persons to Receive Custody	Custody (check one or both)																																						
1. _____	_____	_____	<input type="checkbox"/> Temporary	<input type="checkbox"/> Full																																					
2. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>																																					
3. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>																																					
4. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>																																					
5. _____	_____	_____	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>																																					
<p>12. Indicate any prior or pending custody court cases before, or orders entered by, this court for the following parties: (If none, so state.)</p> <p>a. Petitioner: _____ b. Respondent: _____ c. Children (identified in item 11): _____</p>																																									
<p>13. <input type="checkbox"/> Order Petitioner's residential address on voter's registration record to be closed to the public.</p>																																									

Appendix 5D

14. Pursuant to Section 455.010 to Section 455.085 RSMo, it is requested that the court issue an Ex Parte Order of Protection restraining Respondent from: (check all that apply)

- abusing, threatening to abuse, molesting or disturbing the peace of Petitioner wherever Petitioner may be found.
- stalking Petitioner.
- entering the dwelling of Petitioner located at (see notice below) _____
- communicating with Petitioner in any manner or through any medium.
- other: _____

15. It is further requested that, upon the hearing of this cause, the court issue an Order of Protection enjoining Respondent from the above acts for such time as is necessary to protect Petitioner and that the court: (one or more may be selected)

- Award custody of the minor child(ren) to Petitioner Respondent.
- Order visitation with the minor child(ren) to Petitioner Respondent as follows: _____
- Order Petitioner Respondent to pay child support to Petitioner Respondent in the amount of \$ _____ (check one) per week per month.
- Order Petitioner Respondent to pay maintenance to Petitioner Respondent in the amount of \$ _____ (check one) per week per month.
- Order that Respondent make or continue to make the rent or mortgage payments in the amount of \$ _____ on the residence occupied by Petitioner.
- Order that Respondent pay Petitioner's rent at a residence, other than the residence previously shared with Respondent, in the amount of \$ _____.
- Order that Petitioner be given temporary possession of the following personal property: _____
- Prohibit Respondent from transferring, encumbering, or otherwise disposing of the following property mutually owned or leased with Petitioner: _____
- Order Respondent to participate in a court-approved counseling program designed to help batterers stop violent behavior.
- Order Respondent to pay a reasonable fee for housing and other services provided to Petitioner by a shelter for victims of domestic violence.
- Order Respondent to pay the cost of medical treatment or services provided to Petitioner as a result of injuries sustained by an act of domestic violence committed by Respondent.
- Order Respondent to pay court costs.
- Order Respondent to pay Petitioner's attorneys fees.
- Other (specify): _____

I swear/affirm under penalty of perjury that these facts are true according to my best knowledge and belief.

Date _____

Petitioner's Signature _____

Address (Optional) _____

City, State and Zip _____

Telephone _____

Attorney's Name, Missouri Bar No., if Applicable _____

Address _____

City, State and Zip _____

Telephone _____

NOTICE: Section 455.030.3 RSMo provides that a Petitioner seeking protection under the Adult Abuse Act is not required to reveal any current address or place of residence on this motion. Do not provide this information if doing so will endanger you.

This petition was completed on _____ (date) _____ (time) _____
In the presence of _____ (print name)
Where completed:
<input type="checkbox"/> Columbia Police Dept. <input type="checkbox"/> Boone County Sheriff's Dept.
<input type="checkbox"/> Circuit Clerk's Office <input type="checkbox"/> Other Agency Name: _____ Phone: _____
This petition was received by the Sheriff's Department on OSCA (09-03) XAM (ASPO) a.m./p.m. Initials: _____
3 of 3

455.010, 455.030, 455.030.3, 455.085 RSMo

Appendix 5E

This space is provided for descriptions of acts referenced in paragraph 8 of the Adult Abuse/Stalking Petition for Order of Protection:

Date _____ Time _____ a.m./p.m. (circle one) Address _____ County _____

Description of abuse or stalking:

Date _____ Time _____ a.m./p.m. (circle one) Address _____ County _____

Description of abuse or stalking:

Date _____ Time _____ a.m./p.m. (circle one) Address _____ County _____

Description of abuse or stalking:

2/25/2003ksl Question 8 Description of Acts Alleged.doc

Appendix 5F

This space is provided for descriptions of acts referenced in paragraph 8 of the Adult Abuse/Stalking Petition for Order of Protection:

Date _____ Time _____ a.m./p.m. (circle one) Address _____ County _____
Description of abuse or stalking:

Date _____ Time _____ a.m./p.m. (circle one) Address _____ County _____
Description of abuse or stalking:

Date _____ Time _____ a.m./p.m. (circle one) Address _____ County _____
Description of abuse or stalking:

Appendix 5G

This space is provided for details in reference to Paragraph 9 of the Adult Abuse/Stalking Petition for Order of Protection:

2/25/2003ksl:Question 9 Description of Threat.doc

Appendix 5H



13th Judicial Circuit Court Financial Statement for Petition for Order of Protection

NOTE: You must complete this form, even if not requesting financial assistance.

Petitioner _____	vs.	Case Number: _____
Respondent _____		<u>Petitioner's (Your) Monthly Income</u>
Name and address of petitioner's employer _____ _____ _____	Gross Income: \$ _____	
	Net Income: \$ _____	
	Child Support: \$ _____	
	Pension Income: \$ _____	
	Social Security Income: \$ _____	
	Public Assistance: \$ _____	
	Other Income: \$ _____	
	Cash on Hand: \$ _____	
	Bank Account Balance: \$ _____	

If you are unemployed, indicate how long you have been unemployed: _____

Make and model of automobile(s) and name of owner _____ _____ _____	Your home is (please check one)
	Rented _____
	Leased _____
	Being Purchased _____
	Owned _____

NOTICE OF FINANCIAL LIABILITY

I understand that § 455.027, RSMo., allows me to file this petition with no advanced filing fee. However, at the termination of this case, the judge may order me to pay the court costs associated with this case. If so ordered, I understand that I will be financially liable for these costs which may include clerk's fees, sheriff's fees for service and other related costs.

The facts stated above are true according to my best knowledge and belief. I understand my potential liability for payment of court costs.

Date _____

Petitioner's Signature _____

mm\forms\finstmt.doc rev 5/00

Appendix 5I

BOONE COUNTY CIRCUIT CLERK

Cheryl Whitmarsh
705 East Walnut
Columbia, Mo. 65201
(573) 886-4000
Fax No. (573) 886-4044

Case No. _____

Sheriff's Service Instructions

Please complete the following information to assist the Sheriff's Department in serving a copy of the completed petition and the ex parte order of protection on the respondent. Please provide as much information as possible.

Your Name _____ Home Telephone _____

Hours you can be reached at home _____

Work Telephone _____ Hours you can be reached at work _____

Respondent's Name: _____

Respondent's place of residence and directions to residence if outside of city limits:

Respondent's place of employment and directions if employed outside of city limits:

Hours respondent can be served at work _____

List any other place respondent may be found (friend's house, parent's house, etc.):

BEFORE THIS ORDER BECOMES EFFECTIVE, IT MUST BE APPROVED BY THE JUDGE.

DESCRIPTION OF RESPONDENT

Height _____ Weight _____ Hair Color _____ Hair Length _____

Other Descriptions:

Make, model, color and license number of vehicle respondent drives: _____

ATTACH PHOTO IF AVAILABLE

c_clerk/wp/general/sherser Rev 7/02

Appendix 6

§AP6. Uniform Complaint and Summons

		UNIFORM CITATION		
STATE OF MISSOURI IN THE CIRCUIT COURT OF		COUNTY		DIVISION
COURT ADDRESS (STREET, CITY, ZIP)				
COURT DATE		COURT TIME	<input type="checkbox"/> AM	COURT PHONE NO.
			<input type="checkbox"/> PM	()
I, KNOWING THAT FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY LAW, STATE THAT I HAVE PROBABLE CAUSE TO BELIEVE THAT:				
ON ABOUT (DATE) HRS	AT TIME HRS	HWY CLASS	UPON AT OR NEAR (LOCATION)	
WITHIN CITY/COUNTY AND STATE AFORESAID,				
NAME (LAST, FIRST, MIDDLE)				
STREET ADDRESS				
CITY			STATE	ZIP CODE
DATE OF BIRTH	RACE	SEX	HEIGHT	WEIGHT
DRIVER'S LIC. NO.		COL	STATE	
		<input type="checkbox"/> YES	<input type="checkbox"/> NO	
EMPLOYER				
ADDRESS (STREET, CITY, STATE, ZIP)				
DID UNLAWFULLY		<input type="checkbox"/> OPERATE/DRIVE	<input type="checkbox"/> PARK	<input type="checkbox"/> C.M.V. <input type="checkbox"/> WITH HAZ MAT
V E H I C L E	YEAR	MAKE	MODEL	STYLE COLOR
	REGISTERED WEIGHT	L I C	NUMBER	STATE YEAR
DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE. THE FACTS SUPPORTING THIS BELIEF ARE AS FOLLOWS:				
<hr/> <hr/> <hr/>				
<input type="checkbox"/> Subject taken into custody. (Complete "For issuance of a Warrant" section on reverse side.)				
DRIVING	POSTED SPEED LIMIT MPH	DETECTION METHOD MPH	<input type="checkbox"/> STATIONARY RADAR <input type="checkbox"/> WATCH (AIR) <input type="checkbox"/> PACE <input type="checkbox"/> MOVING RADAR <input type="checkbox"/> WATCH (GROUND) <input type="checkbox"/> OTHER	
IN VIOLATION OF: STATUTE/ORDINANCE -- CHARGE CODE <input type="checkbox"/> RSM _o <input type="checkbox"/> ORD				
SEAT BELT VIOLATION: STATUTE/ORDINANCE -- CHARGE CODE <input type="checkbox"/> RSM _o <input type="checkbox"/> ORD				
<input type="checkbox"/> IN FATAL CRASH <input type="checkbox"/> IN CRASH <input type="checkbox"/> DWI/BAC		OCN		
OFFICER		BADGE	TRP/ZONE	DATE
ON INFORMATION, UNDERSIGNED PROSECUTOR CHARGES THE DEFENDANT AND INFORMS THE COURT THAT ABOVE FACTS ARE TRUE AND PUNISHABLE BY: <input type="checkbox"/> RSM _o <input type="checkbox"/> ORD				
PROSECUTOR'S SIGNATURE SIGNATURE X		DATE		
I PROMISE TO DISPOSE OF THE CHARGES OF WHICH I AM ACCUSED THROUGH COURT APPEARANCE OR PREPAYMENT OF FINE AND COURT COSTS.		DR. LIC. POSTED <input type="checkbox"/> YES <input type="checkbox"/> NO		
MO 100-0051 (2-15) ABSTRACT OF COURT RECORD				

Appendix 7

STATE OF MISSOURI)
)
)
VS.)
)
)

DOB : _____)
SSN : _____)

(Insert offender's name)

PROBABLE CAUSE STATEMENT

I, _____
(name and identify law enforcement officer, or person having information as to probable cause).

UPON MY OATH, AND UNDER PENALTIES OF PERJURY, state as follows:

1. I have probable cause to believe that _____
(Insert name of offender(s))
committed the offense(s) of: _____

2. The facts supporting this belief are as follows: _____

(Insert facts including time and date.)
3. {For the issuance of a warrant in a misdemeanor case, complete the following, if appropriate.}
(a) I believe that the defendant will not appear in court in response to a criminal summons because _____

(Insert facts to show that defendant will not appear, e.g. there is an outstanding warrant for failure to appear.)
(b) I believe that defendant poses _____
(1) a danger to a crime victim because _____

(Insert facts showing that defendant is a danger to the crime victim, e.g. "he is cursing the victim, has hit the victim, and is threatening the victim".)
(2) a danger to the community or to any other person because _____

(Insert facts showing that defendant poses a danger, e.g. he is intoxicated to a level that is unsafe because).

Print Name

Signature

Date:

Appendix 8

COUNTY OF WOODEE }
STATE OF MISSOURI }

AFFIDAVIT OF _____
Before _____, Judge of the
Circuit Court of Boone County, Missouri, the undersigned,
being duly sworn, deposes and says:

That he has reason to believe that certain evidence/
stolen property/contraband, to wit: _____

is presently being concealed at _____

and in
support of his belief states the following:

Subscribed and sworn to before me this _____ day of
, 198 .

Judge of Circuit Court

Appendix 9

**COMPLAINT FOR SEARCH WARRANT
TO AUTHORIZE SEARCH FOR:**

- STOLEN PROPERTY CONTROLLED SUBSTANCES
 A WEAPON, TOOL, DEVICE, OR SUBSTANCE WHICH HAS BEEN USED AS A MEANS FOR COMMITTING AN OFFENSE
 OTHER (SPECIFY)

STATE OF MISSOURI }
COUNTY OF BOONE }

IN THE CIRCUIT COURT, DIVISION _____, WITHIN AND FOR SUCH COUNTY _____, being duly sworn, deposes and states that he/she is a peace officer or prosecuting attorney of Missouri, and further deposes upon information and belief that:

He/She is the following described personal property, to-wit:

of the good and chattels of
has/have been unlawfully stolen;

- Controlled substances, lo-will

Weapon(s), tool(s), device(s), or substance(s) which have been used as a means for committing a felony other than the offense of possessing burglarly tools, is/was:

- Open Journal

That the basis of affiant's information and belief is contained in the attached affidavit of witness to facts concerning the said matter which affidavits are made a part hereof and are submitted herewith as a basis upon which this could make and the subscriber is hereby cause for the issuance of said warrant.

WHEREFORE, COME NOW SETHA THAT A SEARCH WARRANT BE ISSUED AS PROVIDED BY LAW.

[Autosuperior](#) and [more to follow](#) in 2013.

600-61

10

3.1.1 / 8.8

Appendix 10

**SEARCH WARRANT
TO AUTHORIZE SEARCH FOR:**

- STOLEN PROPERTY CONTROLLED SUBSTANCES
 A WEAPON, TOOL, DEVICE, OR SUBSTANCE WHICH HAS BEEN USED AS A MEANS FOR COMMITTING AN OFFENSE
 OTHER (Specify)

STATE OF MISSOURI } ss.
COUNTY OF BOONE }

IN THE CIRCUIT COURT, DIVISION _____ WITHIN AND FOR SUCH COUNTY THE STATE OF MISSOURI TO ANY PEACE OFFICER IN THE STATE OF MISSOURI:
WHEREAS, a complaint in writing, duly verified by oath, has been filed with the undersigned Judge of this Court, stating upon information and belief:

- Heretofore the following described personal property, to-wit:

of the goods and chattels of
has/have been unlawfully stolen;

- Controlled substances, to-wit:

- Weapon(s), tool(s), device(s), or substance(s) which has/have been used as a means for committing a felony other than the offense of possessing burglary tools, to-wit:

- Other, to-wit:

is/are being kept or held in this County and State at and in:

; and

WHEREAS, the Judge of this Court from the sworn allegations of said complainant and from the supporting written affidavits filed therewith has found that there is probable cause to believe the allegations of the complainant to be true and probably cause for the issuance of a search warrant herein;

NOW, THEREFORE, I do command you that you search the said premises above described within ten (10) days after the issuance of this warrant by day or night, and take with you, if need be, the power of your country, and, if said above described property or any part thereof be found on said premises by you, that you seize the same and take same into your possession, making a complete and accurate inventory of the property so taken by you in the presence of the person from whose possession the same is taken, if that be possible, and giving to such person a receipt for such property, together with a copy of this warrant, or if no person be found in possession of said property, leaving said receipt and said copy upon the premises searched, and that you thereafter return the property so taken and seized by you, together with a duly verified copy of the inventory thereto and with your return to this court to this court to be herein dealt with in accordance with law. Witness my hand and the seal of this court this day of , 19 , at a.m./p.m.

Judge of said Court

LAW-C

Appendix 11

RETURN AND INVENTORY

I, being a peace officer within and for the aforesaid county, to-wit: , do hereby make return to the above and within warrant as follows:
that on the day of , 19 , and within ten days after issuance of said warrant,
I went to the location and premises described therein and searched the same for property described therein, and
that upon said premises I discovered the following property described in the warrant which I then and there took
into my possession, here inventory of property taken:

that I made this inventory in the presence of the person from whose possession I took said property (this was not a person present from whose possession of said property was taken); that I delivered to such person a receipt for the property taken, together with a copy of this warrant that, (there being no person in possession of said property on my premises, I left a copy of this warrant with the property taken, in a conspicuous place on said premises); that I have now placed said property as taken in the possession of this court.

Subscribed and sworn to before me this _____ day of _____

Giant Circuit Game Division

On this _____ day of _____, 19_____, the above listed property was released by the Court to the custody of _____.

Clark, Circuit Court

SUBPOENA FOR COURT

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI

VS

COURT CASE NO:

CHARGE:

PROSECUTOR:

STATE OF MISSOURI:

YOU ARE ORDERED TO APPEAR AT: PROSECUTING ATTORNEY'S OFFICE
COURTHOUSE 705 E. WALNUT
COLUMBIA, MO 65201-4485

This subpoena will remain in effect until this case is concluded or you are discharged by the court. You must appear in court from time to time as directed. No additional subpoena is required for your future appearance at any trial of this case. If you fail to appear, you may be held in contempt of court. To avoid an unnecessary appearance, call the docketline at 886-4134, after 5:00 P.M., the evening prior to the court date. If you have any questions, call 886-4130 - Sheila Sublett, Witness Notification Coordinator. Please notify us of any change of address or phone.

Cheryl Whitmarsh
CIRCUIT CLERK

By: _____
DEPUTY CIRCUIT CLERK

SHERIFF'S RETURN

I hereby certify that I served this Writ in the County of Boone, State of Missouri by:

- Mailed a copy to the person subpoenaed
 Reading a copy to the person subpoenaed
 Delivering a copy to the person subpoenaed

Fees: \$ _____ BOONE COUNTY SHERIFF Ted Boehm
Mileage: \$ _____
Non Est: \$ _____ By: _____ Date: _____
Total: \$ _____

File No _____ Type _____ Service By _____ Assigned to _____ by _____

Witness Claim: _____ Days Served: _____ Total Miles Traveled: _____

Signature: _____ Date: _____ Total Claimed: \$ _____
Cheryl Whitmarsh
CIRCUIT CLERK By: _____ DEPUTY CIRCUIT CLERK